

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Governmental Oversight and Accountability

BILL: SB 1490

INTRODUCER: Senator Burgess

SUBJECT: First Responders and Crime Scene Investigators

DATE: January 26, 2024

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	McVaney	McVaney	GO	Pre-meeting
2.			AEG	
3.			AP	

I. Summary:

SB 1490 extends PTSD benefits to 911 public safety telecommunicators and crime scene investigators who are diagnosed with PTSD after experiencing certain qualifying events, like witnessing a death or grievous bodily injury, or verbally aiding a person who dies during a state of emergency because first responders cannot be dispatched.

The bill also expands the definition of “first responder” relating to special rules for workers compensation benefits to include law enforcement officers, firefighters, emergency medical technicians (EMTs) and paramedics, 911 public safety telecommunicators, and federal law enforcement officers, regardless of whether the employer is a state or local government or a private sector entity.

The bill amends the special rules for workers compensation benefits for correctional officers to allow the licensed psychiatrist to diagnose PTSD either in person or using telehealth.

The bill is expected to increase contributions to the Florida Retirement System by \$3.9 million system-wide.

The bill takes effect July 1, 2024.

II. Present Situation:

Diagnosis of Posttraumatic Stress Disorder

According to the American Psychiatric Association, Posttraumatic Stress Disorder (PTSD) is a psychiatric disorder that may occur in people who have experienced or witnessed a traumatic event, such as a natural disaster, serious accident, terrorist act, war, or rape; or people who have

been threatened with death, sexual violence, or serious injury.¹ Exposure to an upsetting traumatic event may be indirect rather than first hand. PTSD can occur if a person learns of the violent death of a close family member or friend, or is repeatedly exposed to the horrible details of trauma.²

Symptoms of PTSD may begin shortly after the traumatic event, or may not appear until years after the event. For a person to be diagnosed with PTSD, symptoms must last for more than one month and must cause significant distress or interfere with the individual's daily functioning.³

Symptoms may include flashbacks, nightmares and severe anxiety, as well as uncontrollable thoughts about the event. This can lead to avoidance of any stimuli that recalls the traumatic events, negative thoughts about oneself or the world, and changes in emotional reactions to events, like being easily startled or having trouble sleeping or concentrating.⁴

Rates of PTSD are higher among veterans, police officers, firefighters, and emergency medical personnel.⁵

Florida Workers' Compensation System

Workers' compensation is a no-fault system that provides medical benefits and compensation for lost wages when an employee is injured or killed in the course of employment. Employers must secure coverage, and may do so by purchasing insurance from an authorized carrier, qualifying as a self-insurer, or purchasing coverage from the Florida Workers' Compensation Joint Underwriting Association, which is the state-sponsored insurer of last resort. In return for providing compensation, the employer is relieved of civil tort liability for workplace injuries, and may only be sued for intentional acts that result in injury or death.⁶

In addition to on-the-job injuries, employers may be required to pay compensation or furnish benefits if an occupational disease causes death or disablement.⁷ In general, an occupational disease is compensable if:

- A condition peculiar to the occupation causes the disease;
- Epidemiological studies show exposure to a specific substance involved, at the levels to which the employee was exposed, may cause the disease;
- The disease is the result of the *nature of the employment*, meaning the occupation presents a particular hazard of the disease or the incidence of the disease is substantially higher in the occupation than in the public;
- The disease is contracted during the course and scope of employment; and

¹ American Psychiatric Association, *What is Posttraumatic Stress Disorder (PTSD)?*, <https://www.psychiatry.org/patients-families/ptsd/what-is-ptsd>, (last visited Jan. 26, 2024).

² *Id.*

³ *Id.*

⁴ Mayo Clinic, *Post-traumatic stress disorder (PTSD)*, <https://www.mayoclinic.org/diseases-conditions/post-traumatic-stress-disorder/symptoms-causes/syc-20355967> (last visited Jan. 26, 2024).

⁵ Institutes of Public Health, *PTSD in First Responders*, <https://institutesofhealth.org/ptsd-in-first-responders> (last visited Jan. 26, 2024).

⁶ Sections 440.015, 440.09, 440.10, 440.38, and 627.313, F.S.

⁷ Section 440.151(1), F.S.

- The nature of the employment is the *major contributing cause* of the disease, meaning the cause is more than 50 percent responsible for the disease as compared to all other causes combined, as demonstrated by medical evidence only.⁸

Benefits for Temporary and Permanent Disability

An employer must pay compensation or furnish benefits if an employee suffers a compensable injury or death “arising out of work performed in the course and scope of employment.”⁹

Medical Benefits

Employees are entitled to receive all medically necessary remedial treatment, care, and attendance, including medications, medical supplies, durable medical equipment, and prostheses, for as long as the nature of the injury and process of recovery requires.¹⁰

Indemnity Benefits

Payments for lost wages, known as indemnity benefits, may be required if an injured employee is unable to work, as determined by an authorized treating medical provider, and typically begin on the eighth day after the employee loses time from work.¹¹ Indemnity benefits fall into four categories:

- Permanent Total Disability – In the case of total disability adjudged to be permanent (*i.e.*, the employee is unable to engage in any type of employment), the employer or its insurance carrier must pay two-thirds of the employee’s average weekly wages until the employee reaches the age of 75.¹²
- Temporary Total Disability – In the case of disability total in character but temporary in quality, the employer or its insurance carrier must pay two-thirds of the employee’s average weekly wages until the employee returns to work or reaches maximum medical improvement, but in no event more than 260 weeks (five years).¹³
- Permanent Impairment – Where an employee has reached maximum medical improvement, is able to return to work, but has a permanent, but partial, physical impairment, the Three-Member Panel¹⁴ establishes and uses an impairment rating schedule which represents a percentage of disability to the body as a whole; a monetary benefit is calculated based on the percentage of impairment.¹⁵
- Temporary Partial Disability – Where an employee may work with restrictions, the employer or its insurance carrier must pay 80% of the difference between his or her weekly earnings prior to injury and post-injury. Payments may be required for up to 260 weeks.¹⁶

⁸ Sections 440.09, and 440.151, F.S.

⁹ Section 440.09(1), F.S.

¹⁰ Section 440.13(2)(a), F.S.

¹¹ Sections 440.14(1), and 440.20(2)(a), F.S.

¹² Section 440.15(1), F.S.

¹³ Section 440.15(2)(a), F.S., limits disability benefits to 104 weeks (two years), but the Florida Supreme Court held that this limit was unconstitutional and directed that a prior limit of 260 weeks (five years) be reinstated. *See Westphal v. City of St. Petersburg*, 194 So. 3d 311 (Fla. 2016).

¹⁴ The Three-Member Panel consists of the Chief Financial Officer, or his or her designee, and two members appointed by the Governor, subject to confirmation by the Senate. S. 440.13, F.S.

¹⁵ Section 440.15(3), F.S.

¹⁶ Section 440.15(4), F.S.

The minimum payment is \$20 per week and the maximum payment is 100 percent of the statewide average weekly wage, which is based on the average weekly wage paid by employers' subject to the Florida Reemployment Assistance Program Law as reported to the Department of Commerce.¹⁷ Payments to injured workers who earn more than the statewide average weekly wage are capped at the statewide average weekly wage that was in effect on the date of injury.¹⁸

General Rules of Compensability for Mental or Nervous Injuries

Mental or Nervous injuries may be compensable, but only if the injury is accompanied by a physical injury that requires medical treatment. Thus, if a workplace accident causes both a physical injury and a related mental or nervous injury, both may be compensable so long as the physical injury that requires medical treatment is the major contributing cause (at least 50 percent responsible) of the mental or nervous injury. A mental or nervous injury caused by "stress, fright, or excitement" is not compensable.¹⁹

As discussed above, an employee who is temporarily disabled by a workplace injury is eligible for up to 260 weeks of disability benefits, which typically results in payment of about two-thirds of the employee's regular wages, beginning on the eighth day after the employee loses time from work.²⁰ However, temporary disability benefits caused by a mental or nervous injury are limited to six months after a claimant reaches maximum medical improvement for the physical injury that triggered the mental or nervous injury.²¹

For employees who are not first responders, benefits for mental or nervous injuries: 1) may last no longer than six months from the date of the maximum medical improvement from the physical injury,²² and 2) may not exceed the 1 percent limit on permanent psychiatric impairment benefits.²³

Special Rules for First Responders

Section 112.1815, F.S., grants "first responders" relaxed standards to make it easier for these personnel to qualify for worker compensation benefits.

The term "first responder" includes:

- A law enforcement officer as defined in s. 943.10, F.S.;
- A firefighter as defined in s. 633.102; and
- An emergency medical technician or paramedic as defined in 401.23.²⁴

¹⁷ Section 440.12(2), F.S.

¹⁸ *Id.*

¹⁹ Section 440.093, F.S.

²⁰ *See supra* note 13.

²¹ Section 440.093(3), F.S.

²² Section 440.093, F.S.

²³ Section 440.15(3)(c), F.S.

²⁴ Section 112.1815(1), F.S.

These personnel must be employed by state or local government; although “volunteer” law enforcement officers, firefighters, EMTs and paramedics “engaged” by a state or local government are considered first responders for this law.²⁵

When determining benefits under s. 112.1815, F.S., the following apply:

- An injury or disease caused by exposure to a toxic substance is not an injury by accident arising out of employment unless there is a preponderance of the evidence establishing that exposure to the specific substance involved, at the levels the first responder was exposed, can cause the injury or disease sustained by the first responder.
- An adverse result or complication caused by the smallpox vaccination of a first responder is deemed an injury by accident arising out of work performed in the course and scope of employment.
- A mental or nervous injury involving a first responder and occurring as a manifestation of a compensable injury must be demonstrated by clear and convincing evidence. For a mental or nervous injury arising out of the employment unaccompanied by a physical injury involving a first responder, only medical benefits under the workers compensation program shall be payable for the mental or nervous injury. However, payment of indemnity as provided in s. 440.15, F.S., may not be made unless a physical injury arising out of injury as a first responder accompanies the mental or nervous injury. Benefits for a first responder are not subject to any limitation on temporary benefits under s. 440.093, F.S., or the 1-percent limitation on permanent psychiatric impairment benefits under s. 440.13(3)(c), F.S.²⁶

The term “occupational disease” means only a disease that arises out of employment as a first responder and is due to causes and conditions that are characteristic of and peculiar to a particular trade, occupation, process, or employment and excludes all ordinary diseases of life to which the general public is exposed, unless the incidence of the disease is substantially higher in the particular trade, occupation, process, or employment than for the general public.²⁷ In cases involving occupational disease, both causation and sufficient exposure to a specific harmful substance shown to be present in the workplace to support causation must be proven by a preponderance of the evidence.

Medical benefits and compensation for lost wages for first responders who are diagnosed with PTSD (as described by the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition, published by the American Psychiatric Association) are permitted.

Posttraumatic stress disorder (PTSD), as described in the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition, published by the American Psychiatric Association, suffered by a first responder is a compensable occupational disease if:

- The posttraumatic stress disorder resulted from the first responder acting within the course of his or her employment; and
- The first responder is examined and subsequently diagnosed with such disorder by a licensed psychiatrist, in person or through telehealth, due to one of the following events:
 - Seeing a deceased minor;

²⁵ *Id.*

²⁶ Section 112.1815(2)(a), F.S.

²⁷ Section 112.1815(4), F.S.

- Directly witnessing the death of a minor;
- Directly witnessing an injury to a minor who subsequently dies before or upon arrival at a hospital emergency department;
- Participating in the treatment of an injured minor who subsequently dies before or on arrival at a hospital emergency department;
- Manually transporting an injured minor who subsequently dies before or on arrival at a hospital emergency department;
- Seeing a decedent whose death was due to grievous bodily harm of a nature that shocks the conscience;
- Directly witnessing a death (including suicide) that involved grievous bodily harm of a nature that shocks the conscience;
- Directly witnessing a homicide, whether criminal or excusable, including murder, mass killing, manslaughter, self-defense, misadventure, and negligence;
- Directly witnessing an injury (including an attempted suicide) to a person who subsequently dies before or upon arrival at a hospital emergency department if the person was injured by grievous bodily harm of a nature that shocks the conscience;
- Participating in the treatment of an injury (including attempted suicide) to a person who subsequently dies before or upon arrival at a hospital emergency department if the person was injured by grievous bodily harm of a nature that shocks the conscience; or
- Manually transporting a person who was injured (including by attempted suicide) who subsequently dies before or upon arrival at a hospital emergency department if the person was injured by grievous bodily harm of a nature that shocks the conscience.²⁸

The PTSD must be demonstrated by clear and convincing evidence.²⁹ However, benefits for a first responder do not require a physical injury and are not subject to:

- Apportionment due to a preexisting PTSD;
- Any limitation on temporary benefits; or
- The 1-percent limitation on permanent psychiatric impairment benefits.³⁰

Permanent total supplemental benefits received by a first responder whose employer does not participate in the social security program shall not terminate after the first responder attains the age of 62.³¹

Special Rules for Correctional Officers

In 2022, s. 112.18155, F., S., was created to authorize medical benefits and compensation for lost wages for correctional officers who are diagnosed with PTSD. As a result, a correctional officer who experiences one of the following qualifying events need not suffer a physical injury to qualify for medical benefits and be compensated for lost wages:

- Being taken hostage by an inmate or trapped in a life-threatening situation as a result of an inmate's act;

²⁸ Section 112.1815(5)(a), F.S.

²⁹ Section 112.1815(5)(b), F.S.

³⁰ Section 112.1815(5)(c), F.S.

³¹ Section 112.1815(3), F.S.

- Directly witnessing a death (including a death due to suicide) of a person who suffered grievous bodily harm of a nature that shocks the conscience;
- Directly witnessing an injury (including an attempted suicide) to a person who subsequently dies before or upon arrival at a hospital emergency department if the person was injured by grievous bodily harm of a nature that shocks the conscience;
- Participating in the physical treatment of an injury, or manually transporting a person who was injured (including by attempted suicide) who subsequently dies before or upon arrival at a hospital emergency department if the person was injured by grievous bodily harm of a nature that shocks the conscience;
- Directly witnessing a homicide regardless of whether the homicide was criminal or excusable, including murder, mass killing (three or more killings in a single incident), manslaughter, self-defense, misadventure, and negligence; or
- Seeing for oneself a decedent whose death involved grievous bodily harm of a nature that shocks the conscience.³²

Eligibility of First Responders and Correctional Officers for PTSD Benefits

To be eligible for workers' compensation benefits for PTSD, the above-mentioned first responders and correctional officers must demonstrate that they were acting within the scope of employment when they experienced a qualifying event,³³ that they were diagnosed with PTSD by the employer or carrier's authorized treating physician,³⁴ and that they reported the injury to their employer within 90 days of a qualifying event or the manifestation of PTSD, whichever is later.³⁵ If the employer or carrier denies benefits, the employee must file a claim for benefits within one year after the qualifying event or diagnosis of PTSD, whichever is later.³⁶

The Division of Workers' Compensation within the Department of Financial Services (DFS) adopted Rule 69L-3.009, F.A.C., to specify the types of injuries that qualify as grievous bodily harm of a nature that shocks the conscience. This rule is used to administer s. 112.1815, F.S., relating to specified first responders (for firefighters, paramedics, emergency medical technicians, and law enforcement officers) and s. 112.18155, F.S., relating to correctional officers.

III. Effect of Proposed Changes:

Section 1 amends s. 112.1815, F.S, to expand the definition of "first responder" to include correctional officers, 911 public safety telecommunicators, and federal law enforcement officers. With this expansion, these new positions will be eligible for medical benefits and lost wages similar to the law enforcement officers, firefighters, EMTs, and paramedics.

The section also removes the requirement that the first responders be employed by state and local governments.

³² Section 112.18155, F.S.

³³ Sections 112.1815(5) and 112.18155(2)(a)1, F.S.

³⁴ Sections 112.1815(5)(a)2 and 112.18155(2)(b), F.S.

³⁵ Sections 112.1815(5)(d) and 112.18155(5), F.S.

³⁶ *Id.*

Section 2 amends s. 112.18155, F.S., to eliminate the requirement that the PTSD for a correctional officer resulted from the officer acting in the course of employment as provided in s. 440.091, F.S. (this appears to be a technical correction because s. 440.091, F.S., does not appear to apply to correctional officers). The section also allows the licensed psychiatrist to diagnose PTSD in person or through telehealth (this is consistent with s. 112.1815, F.S.).

Section 3 creates s. 112.18156, F.S., to provide special rules regarding medical benefits and lost wages for crime scene investigators diagnosed with PTSD. These rules are similar to those applied in ss. 112.1815 and 112.18155, F.S.

The section defines “crime scene investigator” to mean a forensic member of a law enforcement agency, government, or civilian crime laboratory whose primary responsibility is to document, identify, collect, or preserve forensic evidence and whose primary responsibilities include, but are not limited to, collecting evidence such as fingerprints, footprints, tire tracks, blood and other biological fluids, fibers, and fire debris.

The psychiatrist must determine that the PTSD is a result of one of the following events:

- Directly witnessing a death, including a death due to suicide, that involved grievous bodily harm of a nature that shocks the conscience;
- Directly witnessing the death of a minor;
- Directly witnessing an injury, including an attempted suicide, to a person who subsequently dies before or upon arrival at a hospital emergency department if the person was injured by grievous bodily harm of a nature that shocks the conscience;
- Directly witnessing an injury to a minor who subsequently dies before or upon arrival at a hospital emergency department;
- Directly witnessing a homicide regardless of whether the homicide was criminal or excusable, including murder, mass killing, manslaughter, self-defense, misadventure, and negligence;
- Seeing for oneself a deceased minor;
- Seeing for oneself a decedent whose death involved grievous bodily harm of a nature that shocks the conscience; or
- Seeing for oneself a decedent who is in an advanced stage of decomposition.

Section 4 provides a legislative finding that the bill fulfills an important state interest.

Section 5 provides that the act takes effect July 1, 2024.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Article VII, s. 18(a) of the State Constitution provides that: “No county or municipality shall be bound by any general law requiring such county or municipality to spend funds...unless the legislature has determined that such law fulfills an important state interest and unless: ...the law requiring such expenditure is approved by two-thirds of the membership of each house of the legislature . . . or the expenditure is required to comply with a law that applies to all persons similarly situated....”

This bill includes legislative findings that the bill fulfills important state interests, and the bill appears to apply to all persons similarly situated (those employers participating in the Florida Retirement System and those employers employing 911 public safety telecommunicators and crime scene investigators), including state agencies, school boards, state universities, community colleges, counties, municipalities, and special districts.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

Article X, s. 14 of the State Constitution requires that benefit improvements under public pension plans in the State of Florida must be concurrently funded on a sound actuarial basis, as set forth below:

Section 14. State retirement systems benefit changes. – A governmental unit responsible for any retirement or pension system supported in whole or in part by public funds shall not after January 1, 1977, provide any increase in the benefits to the members or beneficiaries of such system unless such unit has made or concurrently makes provisions for the funding of the increase in benefits on a sound actuarial basis.

Article X, s. 14 of the State Constitution is implemented by statute under part VII of ch. 112, F.S, the “Florida Protection of Public Employee Retirement Benefits Act” (Act). The Act establishes minimum standards for the operation and funding of the public employee retirement systems and plans in Florida. The Act prohibits the use of any procedure, methodology, or assumptions the effect of which is to transfer to future taxpayers any portion of the costs which may reasonably have been expected to be paid by the current taxpayers.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill removes the requirement that the “first responders” must be employed by state or local government for the special rules contained in s. 112.1815, F.S, relating to certain occupational diseases to apply. It is unclear to what extent these occupations are employed by private sector businesses, other than correctional officers, EMTs, and paramedics. Thus, the private sector may experience additional costs associated with the changes made to s. 112.1815, F.S.

C. Government Sector Impact:

The bill is expected to increase contributions to the Florida Retirement System by \$3.9 million system-wide.

VI. Technical Deficiencies:

Line 41 of the bill includes “correctional officer, as defined in s. 943.10(2), F.S., in the definition of “first responder”. This suggests a correctional officer will be eligible for benefits under either s. 112.1815 or s. 112.18155, F.S.

VII. Related Issues:

The state actuary under contract with the Department of Management Services completed a special study to determine the actuarial impact on the Florida Retirement System of the changes made by this bill regarding 911 public safety telecommunicators and crime scene investigators. The state actuary determined the system-wide costs to increase \$3.9 million annually. These costs are borne by the FRS-participating employers who employ Regular Class and Special Risk Class members and DROP participants. The table below notes the costs by employer group.³⁷

Employer Group	Increase in Annual Contributions
State	\$0.5 m
School Boards	\$1.7 m
Universities and Colleges	\$0.3 m
Counties	\$1.1 m
Other	\$0.2 m
Total	\$3.9 m

³⁷ Milliman, *Special Actuarial Study of PTSD Presumption for Public Safety Telecommunicators and Crime Scene Investigators*, Table 2, Effect of Proposed Blended Statutory Employer Contribution Rates for 2024-2025 Plan Year Impact to FRS Pension Plan and FRS Investment Plan of Proposed Concept Telecommunicator and Crime Scene Investigator PTSD Presumption Study, at p. 2 (Jan. 23, 2024) (On file with Senate Committee on Governmental Oversight and Accountability).

VIII. Statutes Affected:

This bill substantially amends sections 112.1815, 112.18155, of the Florida Statutes.

This bill creates section 112.18156 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
