
OLR Bill Analysis

sSB 164 (File 362, as amended by Senate "A," "B" and "D")*

AN ACT INCLUDING CERTAIN MENTAL OR EMOTIONAL IMPAIRMENTS WITHIN THE DEFINITION OF "PERSONAL INJURY" UNDER THE WORKERS' COMPENSATION STATUTES.

SUMMARY

This bill allows police officers, parole officers, and firefighters to receive certain workers' compensation benefits for post-traumatic stress disorder (PTSD) caused by their participation in certain "qualifying events." Such events include seeing, while in the line of duty, a deceased minor, someone's death, or a traumatic physical injury that results in the loss of a vital body part. Current law generally does not provide workers' compensation benefits for an employee's mental or emotional injury unless it arises from the employee's physical injury or occupational disease.

More specifically, the bill:

1. establishes the eligibility requirements for these officers and firefighters to receive PTSD benefits;
2. limits the benefits' (a) duration to 52 weeks and (b) availability to within four years after the qualifying event;
3. reduces the amount of weekly PTSD benefits an officer or firefighter may receive by the amount of other benefits he or she receives (e.g., from a pension, Social Security, or disability insurance), if the total benefits exceed the officer's or firefighter's average weekly wage; and
4. establishes a process for employers to contest PTSD claims.

It also requires the Labor and Public Employees Committee to examine the feasibility of expanding the bill's PTSD benefits to emergency medical services (EMS) personnel and Department of

Correction (DOC) employees.

The bill generally prohibits a law enforcement unit from disciplining police officers solely because they seek or receive mental health care services or surrender their work weapons or ammunition. It also requires law enforcement units to request that officers seek a mental health examination before returning their weapons or ammunition. Additionally, it provides civil liability protection to law enforcement units for an officer's actions with a personal firearm under certain conditions.

The bill allows officers who were voluntarily admitted to a psychiatric hospital for psychiatric treatment to use their work weapons or ammunition within six months of being admitted and not be guilty of criminal possession of a handgun or firearm, ammunition, or an electronic weapon.

The bill requires (1) the development and adoption of a model critical incident and peer support policy and (2) resilience and self-care technique training for police officers, parole officers, and firefighters.

It also makes several technical and conforming changes.

*Senate Amendment "A" replaces the underlying bill (File 362) which would have made police officers and firefighters diagnosed with PTSD eligible for full workers' compensation benefits. The amendment (1) limits the extent to which such benefits may be available, (2) allows parole officers to participate, (3) establishes a procedure for contesting PTSD claims, and (4) adds the provisions on law enforcement unit discipline, mental health evaluations, civil liability protection, returning work weapons, and model support policies and self-care training.

*Senate Amendment "B" among other things, (1) changes the necessary qualifications of a mental health professional diagnosing PTSD, (2) modifies (a) the formula to offset PTSD benefits and (b) certain deadlines for contesting a PTSD claim, and (3) requires the Workers' Compensation Commission chairman to report on the

number PTSD claims.

*Senate Amendment "D" removes a provision that would have required the Workers' Compensation Commission's chairperson to report on the number of PTSD claims and instead requires the Labor and Public Employees Committee to examine the feasibility of expanding the bill's PTSD benefits to cover EMS personnel and DOC employees.

EFFECTIVE DATE: July 1, 2019, except the provisions (1) on job protections for police officers, returning work weapons or ammunition, civil liability protections for law enforcement units, and exemptions to the criminal possession law are effective October 1, 2019, and (2) repealing a provision in a separate bill that would allow APRNs to diagnose PTSD in firefighters under certain circumstances is effective June 30, 2019.

§§ 1-3 & 11-12 — WORKERS' COMPENSATION BENEFITS FOR PTSD

The bill establishes the conditions under which police officers, firefighters, and parole officers may receive workers' compensation benefits for developing PTSD due to their participation in certain qualifying events while in the line of duty.

Police Officers, Firefighters, and Parole Officers (§ 2)

Under the bill, police officers are (1) sworn members of an organized local police department; (2) appointed constables who perform criminal law enforcement duties; (3) certain special police officers appointed by the commissioner of emergency services and public protection; or (4) any member of a law enforcement unit who performs police duties, except those of the Indian tribes.

Firefighters are any (1) uniformed member of a paid municipal, state, or volunteer fire department or (2) local fire marshal, deputy fire marshal, fire investigator, fire inspector, and other classes of inspectors and investigators subject to certain minimum qualification standards.

Parole officers are DOC employees who supervise inmates in the

community after their release from prison on parole or under another prison release program.

Qualifying Events (§ 2)

Under the bill, an officer's or firefighter's PTSD diagnosis is compensable with workers' compensation benefits if a mental health professional examines the officer or firefighter and diagnoses PTSD as a direct result of a qualifying event. Under the bill, such an event is one that occurs in the line of duty on or after July 1, 2019, and in which the officer or firefighter:

1. views a deceased minor;
2. witnesses a person's death or an incident involving a person's death;
3. witnesses an injury to a person who subsequently dies before or upon admission at a hospital as a result of the injury and not any other intervening cause;
4. carries, or has physical contact with and treats, an injured person who subsequently dies before or upon admission at a hospital as a result of the injury and not any other intervening cause; or
5. witnesses a traumatic physical injury that results in the loss of a vital body part or a vital body function that results in the victim's permanent disfigurement.

Under the bill, the diagnosing mental health professional must be a board-certified psychiatrist or a licensed psychologist who has experience diagnosing and treating PTSD.

Additional Eligibility Requirements (§ 2)

The bill also requires that the following conditions be met to qualify for benefits:

1. the PTSD resulted from the officer or firefighter acting in the line of duty;

2. the firefighter, if applicable, complied with certain federal Occupational Safety and Health Act standards related to respiratory protection and fire protection for fire brigades (it is unclear how a firefighter can comply with these standards, which generally require employers, not employees, to meet certain criteria);
3. a qualifying event was a substantial factor in causing the disorder;
4. the qualifying event, and not another source of stress, primarily caused the PTSD; and
5. the PTSD did not result from any disciplinary action, work evaluation, job transfer, layoff, demotion, promotion, termination, retirement, or similar action concerning the officer or firefighter.

The diagnosing mental health professional must comply with any workers' compensation guidelines for approved medical providers, including those about releasing past or contemporaneous medical records.

PTSD Benefits (§ 2)

The bill establishes workers' compensation benefits specific to officers and firefighters diagnosed with PTSD under its provisions. Regardless of other requirements under the workers' compensation law, it requires that their benefits include any combination of (1) medical treatment prescribed by a board-certified psychiatrist or a licensed psychologist; (2) temporary total incapacity benefits (i.e., wage replacement); and (3) temporary partial incapacity benefits (i.e., benefits to make up the difference between the employee's regular wage and what he or she earns by working at a reduced capacity). The bill requires employers to provide these benefits for up to 52 weeks after the diagnosis date. In addition, the bill prohibits any of these benefits from being awarded beyond four years after the qualifying event that formed the basis for the PTSD.

The bill further limits an officer's or firefighter's PTSD benefits by potentially offsetting their amount of weekly benefits by the amount of their other benefits, including those received from contributory and noncontributory retirement systems, Social Security, and long-term or short-term disability plans. Under the bill, the officer's or firefighter's weekly PTSD benefits, excluding medical care payments, combined with their other benefits, cannot exceed the officer's or firefighter's average weekly wage.

The bill also prohibits an officer or firefighter receiving PTSD benefits from receiving workers' compensation permanent partial disability benefits (see BACKGROUND).

Contested Claims Process (§ 2)

The bill establishes a process for employers to contest a claim for PTSD benefits that is generally similar to the process used for contesting other workers' compensation claims, although with different deadlines.

Under the bill, an employer must file a notice with a workers' compensation commissioner on or before the 28th day after the employer receives the employee's written notice of claim. The employer's notice contesting the claim, which must be in accord with a form prescribed by the Workers' Compensation Commission chairman, must state (1) that the right to compensation is contested, (2) the claimant's and employer's names, (3) the date of the alleged injury, and (4) the specific grounds on which the employer is contesting the right to compensation. The employer must send a copy of the notice to the employee using the same methods required for other workers' compensation notices (i.e., personally or by registered or certified mail addressed to the employee at his or her last-known residence or place of business).

The employer must begin paying PTSD benefits no later than 28 days after receiving the employee's notice of claim unless the employer or its legal representative files a notice contesting the claim during that period. However, if the employer does not file the notice within 28

days, it may still contest the claim on any grounds, or the extent of the employee's disability, within 180 days after receiving the employee's notice of claim as long as it began paying the PTSD benefits. Any benefits the employer pays during this period must be considered payments without prejudice.

Under the bill, if an employer fails to start paying benefits or contest liability within 28 days after receiving the employee's notice of claim, the employer is conclusively presumed to have accepted the alleged injury's compensability. If the employer posted an address for where an employee's notice of claim must be sent, as allowed under existing law, the 28-day deadline begins when the employer receives the notice at that address.

The employer does not have to begin paying benefits if the employee's notice of claim was not properly served or if it did not include a warning that an employer:

1. who begins paying benefits within 28 days after receiving the notice of claim will be precluded from contesting liability unless it files a notice contesting liability within 180 days after receiving the notice of claim and
2. will be conclusively presumed to have accepted the alleged injury's compensability unless it files a notice contesting liability or begins paying benefits within 28 days after receiving the notice of claim.

As under existing law for other types of contested workers' compensation claims, if an employer contesting PTSD benefits prevails, the employer is entitled to reimbursement from the claimant for any benefits paid by the employer on or after the date when the commissioner receives the employer's written notice contesting the claim.

Conforming Changes to Firefighter PTSD Benefits (§§ 3 & 12)

Under current law, a firefighter diagnosed with PTSD due to witnessing the death of another firefighter in the line of duty may

receive workers' compensation benefits limited to treatment by an approved psychologist or psychiatrist, but not other workers' compensation benefits. The bill removes this limitation, thus allowing such firefighters to receive the PTSD benefits provided under the bill.

The bill also repeals a provision in sSB 921 (File 594) that would allow advanced practice registered nurses to diagnose such firefighters with PTSD.

Possible Benefit Expansion (§ 11)

The bill requires the Labor and Public Employees Committee, by February 1, 2020, to examine the feasibility of expanding the bill's PTSD benefits to cover EMS personnel and DOC employees who are not otherwise eligible for benefits under the bill. In doing so, the committee must consult with representatives from the Workers' Compensation Commission, workers' compensation claimants, employers, insurers, and municipalities. The committee may also consult with anyone else it deems appropriate.

If the committee determines that it is feasible to expand the bill's PTSD benefits during the next legislative session, it must originate a bill making the EMS personnel and DOC employees eligible for the benefits based on a qualifying event occurring on or after July 1, 2019.

§ 4 — JOB PROTECTION

The bill generally prohibits a law enforcement unit from discharging, disciplining, or penalizing a police officer solely because he or she seeks or receives mental health care services or surrenders his or her work firearm, ammunition, or electronic defense weapon to seek such services. This prohibition does not apply to officers who (1) seek or receive mental health care services to avoid disciplinary action or (2) refuse to submit to the mental health examination the bill requires before they can have their weapon or ammunition returned.

By law, a law enforcement unit is any agency, organ, or department whose primary functions include enforcing criminal or traffic laws; preserving public order; protecting life and property; or preventing,

detecting, or investigating crime. It includes the Mohegan and Mashantucket Pequot police units (CGS § 7-294a).

§ 4 — RETURNING WORK WEAPONS OR AMMUNITION

Before a law enforcement unit returns surrendered weapons or ammunition to an officer, the bill requires the unit to request that the officer be examined by a board-certified psychiatrist or licensed psychologist who has experience diagnosing and treating PTSD. The examination must be performed to determine whether the officer is ready to report for official duty and must be paid for by the law enforcement unit.

§ 4 — CIVIL IMMUNITY FOR LAW ENFORCEMENT UNITS

The bill prohibits any civil action from being brought against a law enforcement unit for damages arising from an act or omission of a police officer employed by the unit and using a personal firearm, under certain conditions. There is no civil liability if (1) the officer seeks or receives mental health care services and surrenders his or her work weapon or ammunition and (2) the officer's act or omission occurs during the time period the officer surrendered the work weapon or ammunition or within six months of such surrender, whichever is longer.

§§ 5 & 6 — CRIMINAL POSSESSION

Current law prohibits a person, including a police officer, from possessing a handgun or firearm, ammunition, or electronic weapon if he or she was voluntarily admitted to a psychiatric hospital within the preceding six months, unless the admission was solely for alcohol or drug-dependency. Such criminal possessions are a class C felony, punishable by up to 10 years imprisonment, up to a \$10,000 fine, or both.

The bill exempts from this prohibition officers who were voluntarily admitted to a psychiatric hospital for psychiatric treatment and whose weapons or ammunition were returned in accordance with the bill, thus allowing them to use their work weapons or ammunition within six months after being admitted.

§ 7 — MODEL CRITICAL INCIDENT AND PEER SUPPORT POLICY

The bill requires the Police Officer Standards and Training (POST) Council, DOC, and the Commission on Fire Prevention and Control to develop and promulgate a model critical incident and peer support policy to support the mental health care and wellness of police officers, parole officers, and firefighters.

By July 1, 2020, the bill requires DOC and each law enforcement unit, municipal or state paid or volunteer fire department, and municipal entity employing a firefighter (as defined in the bill) to:

1. adopt and maintain a written policy that meets or exceeds the model policy's standards;
2. make peer support available to such officers and firefighters; and
3. refer an officer or firefighter, as appropriate, seeking mental health care services to a board-certified psychiatrist or licensed psychologist.

§§ 8-10 — RESILIENCE AND SELF-CARE TECHNIQUE TRAINING

The bill requires resilience and self-care technique training for new police officers, parole officers, and firefighters. It applies to such individuals who, on and after January 1, 2020, (1) begin basic training as police officers, (2) are hired as parole officers, or (3) begin initial training as firefighters.

Under the bill, such training must be (1) included in each police basic training conducted or administered by the state police, POST, or municipal police departments and (2) done in consultation with the Department of Mental Health and Addiction Services (DMHAS).

Likewise, the bill requires (1) DOC to provide such training to parole officers and (2) the Commission on Fire Prevention and Control, the State Fire Marshal, and the Codes and Standards Committee, and any other state or municipal entity that provides firefighter training to provide such training firefighters. Each entity providing the training must do so in consultation with DMHAS.

BACKGROUND

Permanent Partial Disability Benefits

Under the state's workers' compensation law, when a physician indicates that a claimant has reached maximum medical improvement from a work-related injury, the claimant may receive permanent partial disability (PPD) benefits if the injury (1) consists of a substantial loss of a body part that results in the body part's permanent partial loss of use, or (2) results in a permanent partial loss of function (CGS § 31-308).

Under certain circumstances, a workers' compensation commissioner may also award a claimant additional PPD benefits to account for the claimant's reduced earning potential due to the injury (CGS § 31-308a).

Related Bill

HB 5154 (File 465), reported favorably by the Public Safety and Security Committee, contains similar provisions concerning job protection, returning work weapons or ammunition, and civil immunity for law enforcement units.

COMMITTEE ACTION

Labor and Public Employees Committee

Joint Favorable

Yea 12 Nay 2 (03/14/2019)

Appropriations Committee

Joint Favorable

Yea 36 Nay 9 (05/13/2019)