
OLR Bill Analysis

sSB 1059

AN ACT CONCERNING THE OFFICE OF THE CORRECTION OMBUDS, THE USE OF ISOLATED CONFINEMENT, SECLUSION AND RESTRAINTS, SOCIAL CONTACTS FOR INCARCERATED PERSONS AND TRAINING AND WORKERS' COMPENSATION BENEFITS FOR CORRECTION OFFICERS.

SUMMARY

This bill makes numerous changes in the laws related to the Department of Correction (DOC). Specifically, it:

1. expands the current correction ombuds program to include everyone in DOC custody and provides additional services and grants additional powers, including (a) receiving complaints from individuals in DOC custody, (b) evaluating the delivery of services to incarcerated individuals, and (c) providing assistance on the incarcerated person's behalf;
2. relocates the correction ombuds program from DOC to the Office of Governmental Accountability (OGA) and adds that the ombuds must act independently of any department in performing its duties;
3. generally requires that each incarcerated person have the opportunity to be outside his or her cell for at least eight hours a day;
4. limits the instances of, and places new requirements on, the use of isolated confinement, seclusion, or restraints (e.g., limiting the amount of time and who can order these methods, requiring various evaluations, documentation, and specific reporting when they are used);
5. establishes certain visitation rights for incarcerated individuals, including generally allowing at least one 60-minute contact

social visit and prohibiting the taking away of an incarcerated person's ability to write, send, or receive letters as discipline, retaliation, or for convenience; and

6. extends to DOC correction officers certain workers' compensation benefits for post-traumatic stress disorder (PTSD) developed due to certain qualifying events in the line of duty.

EFFECTIVE DATE: October 1, 2021, except the provisions on isolated confinement, restraints, and seclusion are effective July 1, 2022.

§ 1 — CORRECTION OMBUDS

The bill expands the current correction ombuds program to include (1) everyone in DOC custody, rather than just those under age 18, and (2) additional services.

Under the bill, the Correction Ombuds Office is moved from DOC to OGA. As under current law, the person seeking ombuds services must have reasonably pursued a resolution of the complaint through any existing internal DOC grievance appeals procedures.

Appointment

By October 1, 2021, and any time the position is vacant, the bill requires the governor to nominate a person qualified by training and experience to perform and lead the correction ombuds office. The bill eliminates the requirement that the DOC commissioner (1) hire a person to provide ombudsman services and the ombudsman's ability to hire an executive assistant and (2) annually report that person's name to the Judiciary Committee.

Legislative Confirmation

Under the bill, any gubernatorial nomination for correction ombuds appointment must be referred, without debate, to the Judiciary Committee, which must report on each appointment within 30 days after that. Each General Assembly appointment must be by concurrent resolution in each chamber.

Upon any vacancy, if the General Assembly is not in session, the candidate the governor chooses serves as acting correction ombuds and is entitled to the compensation, privileges, and powers of the ombuds until the General Assembly meets to act on the appointment. The person appointed as correction ombuds must serve for an initial two-year term and may be reappointed for succeeding terms.

Independence and Authority to Hire Staff

Regardless of any state law, the correction ombuds must act independently of any department in performing the office's duties. The correction ombuds may, within available funds, appoint staff as deemed necessary. Staff duties may include the correction ombud's duties and powers if performed under his or her direction.

Appropriations and Report

The bill requires the General Assembly to annually appropriate the amount needed to pay staff salaries and office expenses and other actual expenses the ombuds incurred in performing his or her duties. Any legal or court fees the state obtains in actions the ombuds brought must be deposited in the General Fund.

Under the bill, the correction ombuds must annually submit to the governor and the Judiciary, Public Health, and Human Services committees a detailed report analyzing the office's work.

"Ombuds" Services

The bill renames current law's "ombudsman services" as "ombuds services" and expands the services to include:

1. evaluating services for incarcerated individuals by DOC, its contractors, and other entities that provide services to people detained in state-funded correctional institutions or halfway houses;
2. periodically reviewing, with a view toward incarcerated individuals' rights, DOC procedures established to carry out correctional institution and DOC laws;

3. reviewing the operation of facilities and procedures used at the facilities where in DOC custody a person may be housed;
4. helping, including to advocate with DOC, service providers, or others on an incarcerated person's behalf; and
5. taking all possible actions, including conducting public education programs, legislative advocacy, and making proposals for systemic reform and formal legal action, in order to secure and ensure the rights of individuals in DOC custody.

As under current law, but extended to everyone in DOC custody, the services include:

1. receiving complaints from individuals in DOC custody regarding department decisions, actions, omissions, policies, procedures, rules, or regulations;
2. investigating these complaints and rendering a decision on their merits and communicating the decision to the complainant;
3. recommending to the DOC commissioner a resolution of any complaint found to have merit; and
4. publishing a quarterly report of all ombuds services and activities.

Confidentiality and Exceptions

Under the bill, in performing his or her responsibilities, the ombuds may communicate privately with any person in DOC custody and these communications must be confidential under certain circumstances.

Under current law, there are confidentiality provisions that protect communication between someone 18 years old and younger who is in DOC custody and the correction ombudsman. The bill extends these protections to everyone in DOC custody, with certain exceptions. Under the bill, all oral and written communications and related records between an individual in custody and the correction ombuds,

or a member of the ombuds' staff, are confidential and may not be disclosed without the individual's consent. However, the ombuds may disclose, without the individual's consent, communications and related records (e.g., the identity of a complainant, the details of a complaint, and the ombudsman's investigative findings and conclusions) that are necessary (1) for the ombuds to conduct an investigation and (2) to support any recommendations the ombuds may make. The ombuds may also disclose, without the individual's consent, the formal disposition of a complaint when requested in writing by a court hearing an application for a writ of habeas corpus filed after the ombudsman's adverse finding on the complaint.

Regardless of any provision of state law concerning confidentiality of records and information, the ombuds must have access to, including the right to inspect and copy, any records needed to carry out the his or her responsibilities. If the ombuds is denied access to any of these records, he or she may issue a subpoena for their (see below).

Under the bill, the name, address, and other personally identifiable information of a person who makes a complaint to the ombuds and all information or confidential records the office obtains or generates when investigating are generally confidential and not subject to Freedom of Information Act disclosure. Except the information and records, other than confidential information concerning a pending law enforcement investigation or a pending prosecution, may be disclosed if the ombuds determines that it is (1) in the general public interest, or (2) needed for the ombuds to perform his or her responsibilities.

Disclosure of Criminal Acts or Threats to Health and Safety

Regardless of the confidentiality provisions, the bill requires the ombuds to notify the DOC commissioner or a facility administrator when, in the course of providing ombuds services, the ombuds or a member of the ombuds' staff becomes aware of the commission or planned commission of a criminal act or a threat to the health and safety of anyone or the security of a correctional facility. If the commissioner reasonably believes that an individual in DOC custody has made or given to the ombuds an oral or written communication

about a safety or security threat within the department or directed against a DOC employee, the ombuds must give the commissioner all oral or written communications relevant to the threat. Under current law, these provisions apply to those age 18 or younger, but the bill applies them to everyone in DOC custody.

Subpoena Power

The bill allows the correction ombuds to issue subpoenas to compel the attendance and testimony of witnesses or the production of books, papers, and other documents and to administer oaths to witnesses in any matter under his or her investigation. If any person to whom the subpoena is issued fails to appear or, having appeared, refuses to give testimony or fails to produce the evidence required, the ombuds may apply to the Superior Court for the Hartford judicial district, which will have jurisdiction to order the person to appear and give testimony or to produce the evidence, as the case may be.

Grants, Gifts, and Bequests

The bill allows the ombuds to apply for and accept grants, gifts, and bequests of funds from other states, federal and interstate agencies, and independent authorities and private firms, individuals, and foundations, to carry out his or her responsibilities. The bill establishes a Correction Ombuds account within the General Fund, which is a separate nonlapsing account. Any funds received under this provision must, upon deposit in the General Fund, be credited to the account and the ombuds may use it in performing his or her duties.

Retaliation Prohibited

The bill prohibits state or municipal agencies from discharging, or discriminating in any manner or retaliating against, any employee who in good faith makes a complaint to the correction ombuds or cooperates with the office in an investigation.

Immunity

Under the bill, the state must protect and hold harmless any attorney, director, investigator, social worker, or other person the Correction Ombuds Office employs and any volunteer the ombuds

appoints. The bill protects them from financial loss and expense, including legal fees and costs, if any, arising out of any claim, demand, or suit for damages resulting from acts or omissions committed in discharging their duties within the scope of their employment or appointment that may constitute negligence, but are not wanton, malicious, or grossly negligent as a court determines.

Study

The bill requires the Correction Ombuds Office to conduct a study on the conditions in the state's correctional facilities and halfway houses. By October 1, 2022, and each year after, the ombuds must submit a report to the Judiciary Committee on the conditions of confinement in these facilities and houses.

§ 2 — ISOLATED CONFINEMENT, RESTRAINTS, AND SECLUSION

The bill limits the instances of, and places new requirements for using, isolated confinement, seclusion, or restraints. The bill specifies that these policies do not apply to any incarcerated person convicted of capital felony or murder with special circumstances. As under existing law, DOC is prohibited from placing any individual under age 18 on administrative segregation status (i.e., placing an inmate on restrictive housing status after determining the inmate can no longer be safely managed within the general inmate population of the correctional facility).

Right to Be Outside the Cell

The bill requires each incarcerated person to have the opportunity to be outside his or her cell for at least eight hours a day, except when held in (1) seclusion or (2) isolated confinement in response to certain situations. These situations are: (1) a serious incident resulting in a correctional facility-wide lockdown, (2) a substantiated threat of imminent physical harm to another person based on recent conduct; or (3) an incarcerated person's request for segregation for the person's protection.

Under the bill, a "serious incident" means any of the following:

1. an attack on a DOC building or facility conducted from outside of the building or facility;
2. a significant breach of a DOC building or facility perimeter;
3. possession of firearms, ammunition, or explosives by an incarcerated person or a visitor to a DOC building or facility;
4. a death or injury to an on-duty DOC employee, a DOC contractor or volunteer, or a visitor to a DOC building or facility, or an unnatural death or admission to an acute care hospital of an incarcerated person;
5. a riot or hostage situation, major fire, or bomb threat at a DOC building or facility;
6. a suspected bio-chemical contamination of a DOC building or facility;
7. any suspected, attempted, or confirmed escape of an incarcerated person from a correctional facility or work detail or during transport, including any escape a public member reports;
8. any incident requiring a unit to be placed on alert or mobilized in response to an emergency at a DOC building or facility;
9. an intentional or accidental firearm discharge at a DOC building or facility, other than during training;
10. use of a category 2 chemical agent at a DOC building or facility, as categorized by the federal Occupational Safety and Health Administration standards, for purposes other than those approved for building, facility, or equipment maintenance;
11. an event that seriously impacts normal DOC operations such as a health emergency, power outage, any major destruction or disablement of state property, or an incident requiring an unplanned lockdown of a DOC facility;

12. a terrorist threat or intelligence of suspected terrorist activity;
13. an instance or threat of workplace violence in any workplace or as part of any work detail requiring the immediate separation of incarcerated individuals due to an imminent threat of violence;
14. a suicide attempt by an incarcerated person requiring immediate life-saving measures; or
15. a reported sexual abuse of an incarcerated person or a DOC employee, contractor, or volunteer committed on or by these individuals where there is immediate evidence or indication that sexual abuse occurred.

Isolated Confinement

Under the bill, before holding any incarcerated person in isolated confinement (i.e., in a cell, alone or with others, for more than 16 hours per day) due to one of the situations described above, a physician and therapist (i.e., a licensed physician specializing in psychiatry, psychologist, marital and family therapist, clinical or master social worker, or professional counselor) must, respectively, conduct a physical examination and a mental health evaluation to determine whether the person is a member of a vulnerable population.

Under the bill, a “member of a vulnerable population” is an incarcerated person who:

1. is age 21 or younger, or age 65 or older;
2. has a mental disability, a history of psychiatric hospitalization, or has recently exhibited self-harming conduct, including self-mutilation;
3. has a developmental disability;
4. has a serious medical condition that cannot be effectively treated in isolated confinement;
5. is pregnant, is in the postpartum period, or has recently suffered

a miscarriage or terminated a pregnancy; or

6. has a significant auditory or visual impairment.

Additionally, DOC must attempt to defuse the instant situation with de-escalation methods (i.e., to effectively defuse a crisis without the use of force by using tactics learned through training to recognize and respond to emotions) and less restrictive measures. Only if these methods and measures fail to defuse the situation may DOC hold a person in isolated confinement.

Under the bill, if DOC holds an incarcerated person in isolated confinement, it must:

1. ensure continuous monitoring of the person's safety and well-being;
2. ensure that any person held in isolated confinement has sufficient and regular access to a toilet, water, food, light, air, and heat;
3. continue de-escalation efforts; and
4. end the person's isolated confinement as soon as the threat of the serious incident or of imminent physical harm to others has passed or the person no longer requests segregation for his or her own protection.

The bill prohibits DOC from subjecting any incarcerated person to isolated confinement (1) because of the person's race, creed, color, national origin, nationality, ancestry, age, marital status, domestic partnership, or civil union status, affectional or sexual orientation, genetic information, pregnancy or breastfeeding status, sex, gender identity or expression, disability, or atypical hereditary cellular or blood trait, or (2) for any continuous period longer than 72 hours, or for more than 72 hours during any 14-day period.

The bill prohibits staff members ranked lower than captain from ordering an incarcerated person to be held in isolated confinement.

The bill only allows those ranked captain or higher or the commissioner or deputy commissioner to order an incarcerated person to be held in isolated confinement for an initial period of up to eight hours. Only those ranked deputy warden or warden or the commissioner or deputy commissioner may order continued isolated confinement in increments of up to eight hours and not more than 48 hours total. Only the commissioner or deputy commissioner may order continued isolated confinement of up to 72 hours total.

Restraints

The bill prohibits DOC from subjecting incarcerated person to the use of:

1. life-threatening restraints (i.e., any physical restraint or hold of a person that restricts the flow of air into a person’s lungs, whether by chest compression or any other means, or immobilizes or reduces the free movement of a person’s arms, legs, or head while the person is in the prone position);
2. pharmacological restraints (i.e., a drug or medication used to manage a person’s behavior or restrict a person’s freedom of movement and not as a standard treatment or administered in a dosage appropriate for the patient’s condition), except as when expressly allowed under the bill (see below); or
3. physical restraints, except when the bill allows for the purpose of (a) transporting the incarcerated person between units or outside the correctional facility, or (b) responding to a substantiated threat of imminent physical harm to another person as evidenced by recent conduct.

Under the bill, “physical restraint” means any mechanical device used to control the movement of an incarcerated person’s body or limbs, including, flex cuffs, soft restraints, hard metal handcuffs, a black box, leg irons, belly chains, a security chain, or a convex shield. But it does not include any medical device or helmet, mitt, or similar device used to prevent self-injury when the device is part of a

documented treatment plan and is the least restrictive means available to prevent self-injury. The bill defines “soft restraints” as any physical restraint constructed of padded, quilted or pliable materials, but does not include, flex cuffs, handcuffs, a black box, leg irons, a belly chain, or a security chain.

Before subjecting any incarcerated person to physical restraints when responding to a substantiated threat of imminent physical harm, DOC must first attempt to defuse the instant situation by using de-escalation methods and less restrictive measures. DOC may use physical restraints only if these methods and measures fail to defuse the instant situation, except as restricted under the laws for pregnant inmates (CGS § 18-69c).

Under the bill, if DOC subjects an incarcerated person to physical restraints when responding to a substantiated threat of imminent physical harm, DOC must:

1. confirm continuous monitoring to ensure the person’s safety and well-being, including requiring a medical professional (i.e., a licensed physician, physician assistant, or advanced practice registered nurse, registered nurse, or practical nurse) to check the restraints and then again every two hours to ensure adequate circulation and range of movement to avoid pain and to allow the incarcerated person to perform necessary bodily functions, including breathing, eating, drinking, standing, lying down, sitting, and using the toilet;
2. ensure that no physical restraints are imposed on an incarcerated inmate who is showering or exercising;
3. continue de-escalation efforts; and
4. end the use of physical restraints on the incarcerated person as soon as the threat of the serious incident or imminent physical harm to others has passed.

The bill prohibits staff members ranked lower than captain from

subjecting an incarcerated person to the use of physical restraints. It only allows those ranked captain or higher to order an incarcerated person to be subjected to the use of physical restraints for an initial period of not more than two hours. Only a deputy warden or warden or the commissioner or deputy commissioner may order the use of physical restraints upon the person for an additional period of up to two hours, provided no incarcerated person is subjected to physical restraints for more than four hours in any 24-hour period.

Use of Restraints or Seclusion

The bill allows DOC to subject an incarcerated person to the use of seclusion (i.e., involuntary confinement of an incarcerated person as a patient in a separate room, subject to close medical supervision for the purpose of protecting the patient and others from harm) or restraints in response to a psychiatric emergency, provided a therapist attempts to defuse the instant situation by using de-escalation methods and less restrictive measures and the methods and measures fail to defuse it. Under the bill, “psychiatric emergency” means an event during which a person poses a substantiated threat of imminent physical harm to himself or herself or another person due to an acute disturbance of behavior, thought, or mood.

The bill only allows a therapist to order an incarcerated person to be subjected to restraints in response to a psychiatric emergency. This may occur after a therapist conducts an in-person evaluation of an incarcerated person and determines that restraints are needed to prevent a substantiated threat of imminent physical harm to the incarcerated person himself or herself or to others because of an acute disturbance of behavior, thought, or mood. The therapist may order the person to be subjected to restraints for a period of up to two hours. A therapist may only order the person to be restrained for an additional period of up to two hours if the therapist, after an in-person evaluation, determines that restraints remain necessary to prevent the same harm as before.

If DOC subjects an incarcerated person to seclusion or restraints in response to a psychiatric emergency, the department must:

1. ensure that any seclusion that occurs or restraints that are imposed are only within the correctional facility's medical units;
2. ensure that the only restraints employed are soft restraints or pharmacological restraints;
3. ensure that no (a) soft restraints are used if pharmacological restraints have already been administered and have alleviated the risk of a serious incident or imminent physical harm, and (b) pharmacological restraints are administered if soft restraints have already been used and have alleviated the risk;
4. ensure a medical professional check the restraints, and then again, every two hours, to ensure adequate circulation and range of movement to avoid pain and that a medical professional continually monitors, through direct observation, the person while he or she is in restraints;
5. continue de-escalation efforts; and
6. end the use of seclusion or restraints on the incarcerated person as soon as the threat of the serious incident or imminent physical harm has passed.

The bill requires DOC to develop standards to enable staff members to determine whether using restraints or seclusion is contraindicated for each incarcerated person, based on the person's medical and psychiatric status. The department must (1) inform each incarcerated person of his or her restraint or seclusion status and (2) maintain the person's restraint or seclusion status in a place easily visible to staff members if an emergency response is necessary.

Documentation

Under the bill, any time DOC uses isolated confinement or seclusion or restrains a person, the department must:

1. video and audio record each incident from the moment the use of restraints or confinement is imposed until the use concludes;

and

2. document de-escalation methods attempted, the cause for the imposition of use of restraints or confinement, and the method and duration of any restraint used.

DOC must retain any video or audio record, or document created for at least five years.

Under current law, DOC must publish on its website a description of any form and phase of housing (i.e., any status, restrictive, or otherwise, that an incarcerated person may experience while in the DOC custody) used at any of its correctional facilities for inmates on restrictive housing status. The bill instead requires DOC to publish this description for incarcerated individuals held in isolated confinement and data used in the report in a downloadable, sortable format.

Restrictive Housing Status

Under current law, “restrictive housing status” means the designation of a DOC inmate that provides for closely regulated management and separation of the inmate from other inmates. The bill instead defines it as any classification that requires closely regulated management and separation of an incarcerated person and includes the following correctional statuses: administrative segregation, punitive segregation, transfer detention, administrative detention, security risk group, chronic discipline, special needs, and protective custody.

Annual Report on Certain Data

Additionally, current law requires DOC to at least annually submit to the Criminal Justice Policy and Planning Division a report containing certain aggregated and anonymized data. The bill instead requires the data to be disaggregated and provide specific information on isolated confinement, restraints, and seclusion, rather than on just administrative segregation generally.

Under current law, the report must include the number of inmates on administrative housing status for the previous year with

disaggregate data with certain personal information, the form and phase of housing the inmate was held in, the durations of time in each status, and a breakdown by correctional facility.

The bill instead requires DOC to report the number of incarcerated individuals who spent any time in isolated confinement during the 12 months before the report's submission.

Under the bill, the data must also include lists of unique individuals in DOC custody during the 12 months before the report's submission who were subjected to any form of isolated confinement or restraints. The lists must include each person's: age, gender identity, ethnicity, total number of days spent in isolated confinement or restraints in the previous calendar year, total number of days spent in isolated confinement or restraints over the course of the entire period of incarceration, specific restrictive housing status, if any, and mental health score as DOC calculated, if any. The isolated confinement list must also include the reason for placement in isolation.

Under the bill, the data must also include the number of incidents, broken down by correctional facility, for the previous calendar year, categorized as:

1. suicides;
2. attempted suicides;
3. self-harm;
4. staff member use of force against incarcerated individuals;
5. incarcerated individuals assaulting staff members; and
6. assaults between incarcerated individuals.

The report must also include the number of incarcerated individuals subjected to more than 72 hours of isolated confinement in the previous calendar year as categorized by the following periods of time (1) up to 15 days, (2) 16 to 30 days, (3) 31 to 79, or (4) 80 or more days.

Restrictive Housing Status Study

By January 1, 2021, the bill requires the DOC commissioner to study and submit a report to the Judiciary Committee on the use and oversight of all forms and phases of housing for inmates on restrictive housing status.

Training and Wellness Measures for DOC Employees

Under current law, DOC, within available appropriations, must provide certain training to, and take measures to promote the wellness of, DOC employees who interact with inmates. The bill expands (1) this training to include the recognition of, and techniques for mitigating, trauma and vicarious trauma, and (2) these measures to include developing and using strategies to prevent and treat trauma-related effects on employees.

§ 3 — VISITATION POLICY AND OTHER INCARCERATED PERSON'S RIGHTS

The bill establishes certain visitation rights for incarcerated people and eliminates the requirement for a separate visitation policy for an inmate who is a parent to a child under age 18. But as under existing law, any policy for such a person must include rules on (1) physical contact, (2) convenience and frequency of visits, and (3) access to child-friendly visiting areas. The bill specifies that this policy does not apply to any incarcerated person convicted of a capital felony or murder with special circumstances.

Under the bill, the visitation policy must:

1. allow at least one 60-minute contact social visit (i.e., an in-person meeting between an incarcerated person and an approved visitor who are not separated from each other by any physical divider, including, a screen or partition) per week;
2. allow visitation by members of an incarcerated person's immediate family, extended family, unmarried co-parents, unmarried romantic partners, and close personal friends (a person's past criminal conviction must not be the sole or

- primary basis for denying a person's application to visit);
3. provide that no incarcerated person may be restrained during a contact social visit; and
 4. provide that no incarcerated person may be deprived of a contact social visit without a hearing at which DOC bears the burden of showing by clear and convincing evidence that denying contact social visits is needed (a) to protect against a substantiated threat of imminent physical harm to DOC employees, the visitor, or another person; or (b) to prevent contraband from being introduced.

The bill prohibits DOC from depriving an incarcerated person of contact social visits for more than 90 days, except for those convicted of a capital felony or murder with special circumstances.

Mail and Writing

The bill requires the DOC commissioner to establish policies concerning mail to and from incarcerated people. The policies must (1) allow each incarcerated person to write, send, and receive letters without limiting the number of the letters an incarcerated person receives, writes, and sends at his or her own personal expense, and (2) prohibit unnecessary delays in processing an incarcerated person's incoming and outgoing mail.

The bill requires each correctional facility commissary to sell: (1) stationery, envelopes, postcards, greeting cards, and postage; and (2) aerogramme folding letters (i.e., light paper foldable and sealable to form a letter) for foreign air mail letters.

Under the bill, DOC is prohibited from depriving an incarcerated person the ability to write, send, or receive letters for discipline, retaliation, or convenience. The department must provide each incarcerated person the following items free of charge:

1. materials and postage needed to send two social letters per week;

2. a writing instrument; and
3. at least 20 sheets of writing paper, per month, and eight letter-size envelopes with postage for eight letters per month.

Reasonable requests that demonstrate an incarcerated person's need for additional sheets of paper for letters to the court or attorneys may be granted.

Telephone Calls

The bill requires the DOC commissioner to establish policies on telephone calls to and from incarcerated people. The policies must:

1. ensure incarcerated people can make or receive at least two social phone calls per week, which can last up to 60 minutes free of charge; and
2. prohibit DOC from depriving an incarcerated person of telephone calls for discipline, retaliation, or convenience.

§§ 4-8 — DOC EMPLOYEE WORKERS' COMPENSATION

The bill extends to DOC correction officers certain workers' compensation benefits for PTSD developed due to their participation in qualifying events in the line of duty. By law, these benefits are available to police officers, firefighters, and parole officers.

Qualifying Events (§ 5)

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

1. views a deceased minor;
2. witnesses (a) a person's death or an incident involving a person's death, (b) 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, or (c) 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; or

3. 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.

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 (§ 5)

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

1. the PTSD resulted from the officer acting in the line of duty;
2. a qualifying event was a substantial factor in causing the disorder;
3. the qualifying event, and not another source of stress, primarily caused the PTSD; and
4. the PTSD did not result from any disciplinary action, work evaluation, job transfer, layoff, demotion, promotion, termination, retirement, or similar action concerning the officer.

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 (§ 5)

Regardless of other requirements under the workers' compensation law, the bill requires that the correction officer's 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. It also prohibits (1) any of these benefits from being awarded beyond four years after the qualifying event that formed the basis for the PTSD and (2) an officer receiving PTSD benefits from receiving workers' compensation permanent partial disability benefits (see BACKGROUND).

The bill further limits an officer's PTSD benefits by prohibiting them from exceeding the officer's average weekly wage when combined with his or her other benefits, including those received from contributory and noncontributory retirement systems, Social Security, and long-term or short-term disability plans. (Presumably, in such instances the officer's PTSD benefits would be reduced by the amount that his or her total combined benefits otherwise exceeds his or her average weekly wage.)

Contested Claims Process (§ 5)

The bill extends to the correction officer's provision the current law's process for employers to contest a claim for PTSD benefits that is generally like the process used for contesting other workers' compensation claims, although with different deadlines.

As under current law, an employer must file a notice contesting the claim 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, which must be in accordance with a form prescribed by the Workers' Compensation Commission chairperson, 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.

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 by 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 must file a notice contesting liability within 180 days after receiving the notice of claim in order to contest liability 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.

Approved List for Use of Force Psychiatric Treatment (§ 6)

Regardless of any workers' compensation law, a correction officer who suffer a mental or emotional impairment from the officer's use of deadly force or facing deadly force in the line of duty is limited to treatment by a psychologist or a psychiatrist who is on the approved list of practicing physicians the Workers' Compensation Commission chairperson establishes.

Model Critical Incident and Peer Support Policy (§ 7)

Under current law, the Police Officer Standards and Training Council, DOC, and the Commission on Fire Prevention and Control are required 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. The bill extends these policy requirements to correction officers and requires them to be done by January 1, 2022.

The bill also requires that DOC do the following for correction officers, by July 1, 2022:

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
3. refer an officer, as appropriate, seeking mental health care services to a board-certified psychiatrist or licensed psychologist.

Resilience and Self-Care Technique Training (§ 8)

As under current law for parole officers, the bill requires DOC, in consultation with the Department of Mental Health and Addiction Services, to provide resilience and self-care technique training to each correction officer hired on or after January 1, 2022.

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 Bills

HB 972 (File 453), favorably reported by the Judiciary Committee, requires DOC to, among other things, provide free telephone services for inmates in correctional facilities.

sHB 6595 (§§ 5-6) (File 463), sSB 1002 (§§ 5-6) (File 464), SB 660 (File 446), all reported favorably by the Labor and Public Employees Committee, contain the same workers' compensation PTSD provisions for correction officers.

COMMITTEE ACTION

Judiciary Committee

Joint Favorable Substitute

Yea 27 Nay 11 (04/08/2021)