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FISCAL IMPACT REPORT

SPONSOR <u>Alcon</u>	LAST UPDATED <u>3/03/2023</u>
SHORT TITLE <u>First Responder PTSD</u>	ORIGINAL DATE <u>2/27/2023</u>
	BILL NUMBER <u>House Bill 427/aHLVMC</u>
	ANALYST <u>Tolman</u>

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT* (dollars in thousands)

	FY23	FY24	FY25	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Workers' compensation costs to state and local governmental entities	No fiscal impact	\$200 to \$2,400	\$200 to \$2,400	\$400 to \$4,800	Recurring	Workers' compensation costs to state and local governmental entities
Total	No fiscal impact	\$200 to \$2,400	\$200 to \$2,400	\$400 to \$4,800	Recurring	Workers' compensation costs to state and local governmental entities

Parentheses () indicate expenditure decreases.
 *Amounts reflect most recent analysis of this legislation.

Sources of Information

LFC Files

Responses Received From

Office of Superintendent of Insurance (OSI)
 Workers' Compensation Administration (WCA)
 Department of Health (DOH)
 Children, Youth and Families Department (CYFD)
 New Mexico Corrections Department (NMCD)
 Department of Public Safety (DPS)
 Homeland Security and Emergency Management Department (HSEMD)

No Response Received

Administrative Offices of the Courts (AOC)
 Workforce Solutions Department (WSD)

SUMMARY

Synopsis of HLVMC Amendment

The House Labor, Veterans and Military Affairs Committee amendments to House Bill 427 adds adult detention officers and juvenile detention officers to the list of occupations included in the definition of law enforcement officer.

Synopsis of Original Bill

This bill creates a presumption that posttraumatic stress disorder is proximately caused by employment for emergency medical services first responders or law enforcement officers, which includes both juvenile and adult correctional officers and juvenile and adult probation and parole officers. If this diagnosis is not revealed during the initial employment medical screening examination or subsequent medical reviews, the condition is presumed to be caused by their employment as a first responder.

Under the bill, this presumption might be rebutted by a preponderance of the evidence in court. If the presumption does not apply, it would not preclude a first responder from demonstrating a casual connection between employment and condition/injury by a preponderance of evidence in court.

Medical treatment based upon this presumption would be required to be provided by the employer as if it was a job-related condition or injury (workman’s comp). If a court determines that the presumption would not apply, the employer’s workers’ compensation insurance provider would be reimbursed for health care costs by the medical or health insurance plan provided by the employer.

The effective date of this bill is July 1, 2023.

FISCAL IMPLICATIONS

The Workers’ Compensation Administration’s (WCA) 2022 Annual Report¹ cites that there were 9,881 non-indemnity claims (medical claims apply to workers who become permanently disabled due to injury) in 2021 and 3,691 indemnity claims (payments to the injured worker or dependents that compensate for wage loss, functional impairment, or death) in 2021. New Mexico carriers and self-insurers paid a total of \$266.45 million for 32,540 claims in 2021, which both decreased compared to 2020, or \$72,189.11 per indemnity claim. Total expenditures covered four categories, namely, medical (\$144.4 million); indemnity (\$105.0 million); legal (\$12.3 million) and other expenditures (\$4.8 million). The Workers’ Compensation Administration (WCA) reported² that between 2018 to 2022, occupations potentially covered by HB427 made a total of 10 workers’ compensation claims for PTSD, or an average of two annually.

Table 1. New Mexico Workers’ Compensation New SROI Claims 2018 – 2022

Occupation Description	PTSD Injury Count
Correctional Officers and Jailers	2
Emergency Medical Technicians and Paramedics	2
Fire Fighters	3
First-Line Supervisors/Managers of Correctional Officers	1
Police and Sheriffs Patrol Officers	2
Total New PTSD Claims 2018 – 2022	10

Note: The table above represents PTSD and probable PTSD claims based on data reported to the Workers’ Compensation Administration by workers’ compensation payers between 2018 and 2022. The numbers do not include cases for which the payer may have reported an incorrect injury code or occupation code.

Source: Workers’ Compensation Administration

¹ New Mexico Workers’ Compensation Administration (2022). New Mexico Workers’ Compensation Administration 2022 Annual Report. Available:

https://workerscomp.nm.gov/sites/default/files/documents/publications/research/ar22/AR_2022.pdf

² New Mexico Workers’ Compensation Administration (February 27, 2023). Personal communication.

In 2019, California passed Senate Bill (SB) 542, which also created a similar rebuttable presumption that firefighters' and peace officers' posttraumatic stress disorder claims are work-related and thus eligible for full workers' compensation benefits. The RAND Corporation conducted a research study³ on the costs associated with those claims and found that without the California legislation, first responders' workers' compensation claims involving PTSD would cost state and local governments an average of \$20 million per year in benefit costs. Under the new California law, costs for claims involving PTSD may increase substantially. Costs under the California legislation are highly uncertain, however, and could range from \$48 million to \$347 million per year. Two mechanisms were identified as potential cost drivers: more first responders might make PTSD claims following passage of the law and fewer of their PTSD claims would be denied, which could result in higher costs per claim filed. Researchers found that, prior to the passage of the California bill, first responders' PTSD workers' compensation claims were more likely to be denied than PTSD claims filed by other types of workers and that first responders' PTSD claims were more likely to be denied than claims for other conditions. Given these findings from similar legislation passed in California, one could expect the total cost for workers' compensation claims for law enforcement and emergency first responders to increase by a factor of 2.4 to 17.4 if HB 427 is passed.

Currently, an average of two workers in the occupations covered in HB427 file workers' compensation claims for PTSD with an average cost to New Mexico carriers and self-insurers per indemnity claim in 2021 of \$72,189.11. Assuming an increase of claims by workers in these occupations by a factor of 2.4 to 17.4, then one can expect 4.8 to 34.8 workers' compensation claims for PTSD by workers in these occupations per year, or an increase of 2.8 to 32.8 claims per year. This could reflect a total increased workers' compensation costs ranging from \$200 thousand to \$2.4 million to state and local governmental entities that employ these occupational classes due to an anticipated increase in the frequency in claims from these employees claiming to suffer from PTSD. This increase could reflect as much as one percent increase to the total claims paid by New Mexico carriers and self-insurers.

The New Mexico Workers' Compensation Administration (WCA) indicated that there is unlikely to be an impact on the agency, since the WCA already has jurisdiction to adjudicate PTSD claims filed by law enforcement officer and emergency first responders.

The Children, Youth and Families Department (CYFD) indicated that their department could be fiscally impacted and that they could not absorb these impacts through existing fiscal resources. CYFD annually averages 20 workers' compensation claims filed, and expects that number to double under this bill, to cover 10% of the affected work force. CYFD reports that they are currently not funded for an anticipated doubling of its workers' compensation claims, which could entail additional medical care provided to employees who qualify for medical care and benefits (e.g., temporary total disability, temporary partial disability, permanent partial disability) until and unless that presumption of entitlement to benefits is overcome. CYFD indicates that one additional FTE attorney could be necessary to litigate the presumption of

³ Quigley, Denise D., Michael Dworsky, Nabeel Qureshi, J. Scott Ashwood, Kelsey O'Hollaren, and Lisa S. Meredith, Posttraumatic Stress in California's Workers' Compensation System: A Study of Mental Health Presumptions for Firefighters and Peace Officers Under Senate Bill 542. Santa Monica, CA: RAND Corporation, 2021. Available: https://www.rand.org/pubs/research_reports/RRA1391-1.html.

PTSD. This could increase the likelihood of overtime in secure facilities to cover staff out on workers' compensation. CYFD also reports that additional pre-employment screening may be necessary to assess a potential employee's prior level of PTSD. CYFD reports that they are currently not funded to conduct such pre-employment assessments, which could be between two and four hundred assessments.

The New Mexico Corrections Department (NMCD) notes that the passing of the bill has the potential to increase the number of workers compensation claims filed which could then result in additional expenses to the department directly or through costs paid by the Risk Management Division. The Department of Public Safety (DPS) and Homeland Security and Emergency Management Department (HSEMD) also both report that the fiscal implications are indeterminate as they participate in the state's Risk Management Division's insurance pool.

SIGNIFICANT ISSUES

First responders, including police, fire rescue personnel, and emergency dispatchers, have been viewed as populations at high risk for developing PTSD symptoms. In a review of the research published in the journal *Aggression and Violent Behavior*, over 80 percent of first responders reported experiencing traumatic events on the job, and it was estimated that 10 – 15 percent have been diagnosed with PTSD.⁴ According to a report by the Substance Abuse and Mental Health Services Administration (SAMHSA), roughly one in three emergency first responders develop PTSD, compared to one in five incidence of PTSD in the general population.⁵

According to the Department of Health (DOH), the symptoms of PTSD can make it difficult for emergency first responders to perform their job properly. Some identified effects of PTSD include emotional numbing and avoidance, mental health problems like depression and anxiety, problematic alcohol use or substance abuse, and suicidal ideation. DOH notes that identified barriers, which prevent first responders from receiving proper care for PTSD, include the cost of treatment, lack of effective treatments, fear of job repercussions, and stigma associated with a PTSD diagnosis.

CYFD notes that the job of juvenile correction officer (JCO) entails frequent mental challenges, long hours, and a need for continuous awareness to ensure client and personal safety. CYFD's Juvenile Justice Services Division current vacancy rate for JCOs is 50%. Juvenile probation officers (JPO), although not supervising clients in a confined setting, face many of the same challenges as juvenile corrections officers. JPOs address concerns from their clients, their clients' families, law enforcement, court systems, and providers daily, while constantly weighing public safety and client needs.

CYFD reports that part of ensuring a safe workplace is caring for the mental health and well-being of staff, while working to mitigate the impact to staffing for those who work in these areas. CYFD notes that they strongly encourage employees that may require assistance, to utilize the

⁴ Kristin E. Klimley, Vincent B. Van Hasselt, Ashley M. Stripling, (2018) Posttraumatic stress disorder in police, firefighters, and emergency dispatchers, *Aggression and Violent Behavior*, 43, 33-44. ISSN 1359-1789, Available: <https://doi.org/10.1016/j.avb.2018.08.005>. (<https://www.sciencedirect.com/science/article/pii/S1359178918302416>).

⁵ Substance Abuse and Mental Health Services Administration (May 2018). First responders. Behavioral health concerns, emergency response, and trauma. Available: <https://www.samhsa.gov/sites/default/files/dtac/supplementalresearchbulletin-firstresponders-may2018.pdf>.

Employee Assistance Program (EAP), which can provide a gateway to mental health professionals that can assist employees with finding treatment for long-term mental health care. CYFD also acknowledges that employees in several areas of CYFD in general, and employees that work in the Protective Services Division (PSD) specifically, could also benefit from a workers compensation claim, as they too may experience PTSD in their positions. But unlike the JCOs and JPOs entitled under this bill, PSD workers, as with any workers comp claim, would still bear the burden of proving the PTSD as a work related injury if this bill were to pass.

CYFD also notes that there are no timeframes associated with this bill. For example, an employee could be on the job only a few weeks and claim PTSD, or they could have left their job fifteen years ago and claim PTSD during their employment. CYFD claims that this lack of timeframe makes it difficult to fully assess whether an employee's mental health issues are related to the job they just started or left several years ago.

HSEMD notes that HB427 is unclear as to whether firefighters are intended to receive the presumption.

PERFORMANCE IMPLICATIONS

CYFD notes that it has performance measures related to retention of staff, which may be affected by this bill, since this bill establishes a disparity and inconsistency of treatment between classes of employees.

OTHER SUBSTANTIVE ISSUES

DPS reports that it is grateful for the contemplation of this bill and that it is supportive of the recognition of the stressful nature of public safety work and the unintended collateral consequences of service. DPS notes that there may exist other types and classifications of employees which perform functions in the public safety space who may do work that subjects them to PTSD impacts, which should be considered for inclusion, including public safety telecommunicators, inspection of public records custodians, forensic laboratory scientists and technicians, crime scene technicians and evidence employees. Similarly, CYFD noted that other classifications of employees could experience PTSD in their positions, particularly Protective Services Division workers.

DPS also notes that they and particularly the New Mexico Law Enforcement Academy, serve a number of public safety agencies ranging from large metropolitan to small towns and villages. DPS notes that the absence of an appropriation could be a potential limiting factor for smaller, rural jurisdictions within our state, since they could be disproportionately impacted if a workers' compensation claim was filed against them.

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