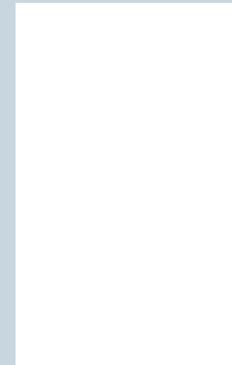
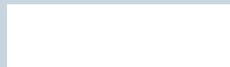
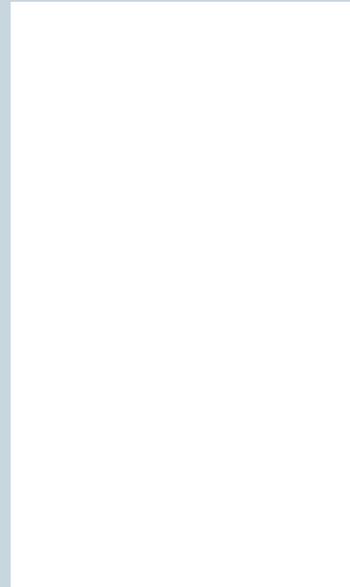




# Addressing the Emergence of PTSD Presumption Issues and Solutions



# How Big is the Issue?

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## First, let's understand the moving parts:

First responders contend the current workers' compensation system is inadequate in providing timely and valuable benefits for occupational illnesses.

- First responders seeking relief include police, employed and volunteer firefighters, emergency medical technicians
- In recent legislative versions, occupational illnesses include respiratory, cardiac, cancer, mental/nervous, PTSD conditions

## And identify the groups involved in the discussion:

- Cities, counties, states
- First responder associations and unions
- Politicians
- Workers' comp pool managers
- Supporting lobbyists
- Lawyers, lawyers and more lawyers

# Then, Let's Consider the Scope of PTSD Legislation in 2017

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## States passing PTSD specific legislation for first responders:

- **Colorado** – Two bills: First recognizes PTSD as compensable under workers' compensation and second allows for treatment of PTSD with medical marijuana
- **South Carolina** – Created a \$500,000 fund to help fund first responders' out of pocket medical costs related to treatment of PTSD
- **Texas** – Act eases evidentiary burden for first responders filing PTSD claims: “preponderance of evidence” and without the need to declare mental impairment
- **New York** – Included PTSD references in 2018 budget allowing first responder claims for mental injury based on extraordinary work-related stress
- **Vermont** – Created a true occupational presumption for PTSD
- **Maine** – Created a true occupational presumption for PTSD

## States that considered PTSD legislation but did not pass:

- **Florida**
- **Connecticut**
- **Minnesota**
- **New Mexico**
- **Ohio**

# Forces Driving PTSD Presumption

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## Emerging Trends

- 34% of first responders have been diagnosed with clinical depression or PTSD
- Best guess – at least 20% to 37% of first responders likely to be diagnosed with PTSD at some point
- 24 states now permit the use of medical marijuana to treat first responder PTSD

## Much of it flows from the debt of 9/11 and its aftermath:

- First responders have earned unquestionable protection of health under the law
- A generation of veterans now fill the ranks of first responders

## And in some ways, the role of workers' compensation has changed:

- Very easy means of assuaging a community's need to help
- Likely increase in cost to community led by the desire to “do the right thing”
- Lack of persuasive scientific evidence is irrelevant – sentiment over science

## Still plagued by the uncertainty of cost – every source weighs the cost of PTSD differently

# 2017 PTSD Legislation Examples – Vermont HB 197

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## Legislative Intent

- Establishes a rebuttable presumption for first responders diagnosed with PTSD or presuming PTSD was incurred during service in the line of duty; and included mental conditions under the definition of “**occupational disease**”
- Diagnosis must be made within three years of last active date of employment

## Definition of Traumatic Event

- Stressful event compared to the “**average employee across all occupations...**”

## Definition of Mental Health Professional

- Very broad description of mental health professional and includes clinical social worker, mental health counselor and alcohol or drug abuse counselor

## Basis to Rebut

- Must be shown by a preponderance of the evidence that the PTSD was “**caused by nonservice-connected risk factors or exposure**”

## Fiscal Impact

- NCCI estimated HB 197 would potentially “**result in a significant impact on systems costs for police, fire, rescue or ambulance worker classification**”

# 2017 PTSD Legislation Examples – Maine LD 848

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## Legislative Intent:

- Created a PTSD presumption for active first responders and **corrections officers**

## Definition of Traumatic Event:

- Clear and convincing evidence that the work-related stress that is “**extraordinary and unusual in comparison to pressures and tensions experienced by the average employee across all occupations**”

## Definition of Mental Health Professional

- Allopathic or osteopathic physician with specialization in psychiatry or psychology

## Basis to Rebut

- May rebut by “**clear and convincing evidence to the contrary....**”
- In other words, question whether work stress was extraordinary and unusual

## Fiscal Impact:

- Estimated to increase statewide municipal expenses by as much as \$2.5 million annually

# 2018 PTSD Legislation Examples – New Hampshire SB 553

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## Legislative Intent:

- Creates a PTSD presumption for active first responders with coverage extending to diagnoses made up to 3 years following cessation of service

## Definition of Traumatic Event:

- Work-related stress that is “extraordinary and unusual in comparison to pressures and tensions experienced by the ***average employee across all occupations***”

## Definition of Mental Health Professional

- Like Vermont HB 197, SB 553 expands the definition to include “clinical social worker, mental health counselor, or alcohol or drug abuse counselor”
- Requires “***demonstrated competence in the treatment and diagnosis of mental conditions***”

## Basis to Rebut

- May rebut by “***preponderance of the evidence that the post-traumatic stress disorder was caused by non-service-connected risk factors or non-service connected exposure***”

## Fiscal Impact:

- Legislative summary uses phrase “***fiscal impact is indeterminable***” three times

# 2018 PTSD Legislation Examples – Florida SB 126

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## Legislative Intent:

- Allows for award of workers' compensation for mental nervous injury without presence of physical injury
- Does not create a presumption for first responders but eases evidentiary burden to prove PTSD within the workers' compensation system

## Evidentiary Requirement

- First responder must demonstrate a mental or nervous injury is occupationally caused by “**a preponderance of the evidence**”
- Easier evidentiary burden from prior “**clear and convincing**” standard

## Basis to Rebut

- May rebut by demonstrating mental nervous condition is not work related but can be attributed to non-work related stress or even questioning severity of exposure to work-related stress

## Fiscal Impact:

- Unknown – no guidance in the legislation

# What does the Future Hold for PTSD Legislation and Presumption?

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## First Responders will lobby to improve/broaden existing workers' compensation laws

- Fewer limitations regarding eligibility
  - ✓ Lobby efforts to legislate closer to the Oregon, Vermont, Maine models
  - ✓ Easier burden of proof for first responders
  - ✓ More mental/mental legislation
  - ✓ PTSD specifically defined as a mental/nervous condition for workers' compensation
- Broadening volunteer first responder coverage

## Public Entities and Insurance markets will develop alternative approaches to fit legislative requirements

- PTSD suite of insurance products
- Improvements in behavioral health tele-medicine and on-site clinics
- More effective employee assistance programs – taken from examples in the private sector
- Taxpayer-paid and voluntary products
- Better communication strategies