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March 4th, 2021

Chairman Knodl and Assembly Government Accountability and Oversight Committee Members,

Thank you for holding a Public Hearing on AB 17 related to public safety PTSD coverage and consensus worker's compensation advisory council reforms.

With increasing suicide rates for first responders suffering from PTSD, there is a general consensus that something needs to be done. This legislation will make changes to finally clarify the conditions of liability for worker's compensation benefits for a law enforcement officer or a fire fighter who is diagnosed with post-traumatic stress disorder to ensure the coverage they need is received. Similar legislation has been passed in recent years by several other states, including Minnesota, with negligible impact on overall workers compensation system costs.

While current law provides that an employer is liable for accidents or diseases of its employees if the accident or disease causing injury arose out of the employee's employment, it also requires that for a mental injury to be compensable under the worker's compensation law, the mental injury must result "from a situation of greater dimensions than the day-to-day emotional strain and tension which all employees must experience," stemming from a 1974 Wisconsin Supreme Court Case. However, the day-to-day situations faced by public safety first responders (by the very nature of their occupation) involve death, danger and violence with such frequency that they are much more likely to experience PTSD from the cumulative effect and suffer greatly as a result.

This bill eliminates the "greater dimensions" requirement for coverage of a public safety first responder's work-related PTSD diagnosis, recognizing that while a single event can trigger PTSD, so can repeated exposure to dangerous high stress events (the emotional responses to which may often be very different between any two people). AB 17 requires a preponderance of evidence standard and that the mental injury is not the result of or first reported during a good-faith employment action by the person's employer. Additionally, this bill includes a key compromise between all stakeholders of 32 weeks of covered treatment after the injury is first reported. Helping public safety employees with the treatment needed to recover from PTSD and return to work also reduces the long term costs of duty disability and training of new personnel.

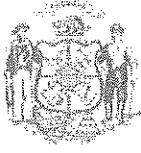
PTSD can be treated effectively, and allow those affected to return to protecting and serving the public. It is critical that the men and women we have depended on as first responders that are affected by PTSD have access to treatment and the support they need to recover, both for their own health and those who depend on them.

AB 17 is supported by the Wisconsin Professional Police Association, Wisconsin Chiefs of Police Association, Professional Fire Fighters of Wisconsin, Wisconsin Sheriffs and Deputy Sheriffs Association, Badger State Sheriffs' Association, Wisconsin Troopers Association, Wisconsin Independent Businesses, Wisconsin Manufacturer's & Commerce, and the Wisconsin State AFL-CIO.

This legislation has been presented to the Wisconsin Worker's Compensation Advisory Council and approved by both the Labor & Management Caucuses, and includes a number of provisions from their previous consensus proposal to the legislature.

The Senate has already unanimously passed the identical companion bill (SB 11) in the Senate this session.

I appreciate your consideration of this bill and I would be happy to answer any questions you may have.



ANDRÉ JACQUE

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*Testimony before the Assembly Committee on Government Accountability and Oversight
State Senator André Jacque
March 4th, 2021*

Chairman Knodl and Members of the Committee on Government Accountability and Oversight,

Thank you for the opportunity to provide testimony in support of Assembly Bill 17, the Public Safety PTSD Coverage Act & Consensus Worker's Compensation Advisory Council Reforms. This very bi-partisan legislation was drafted in partnership with a coalition of Wisconsin's public safety first responders to enable them to receive the necessary help to properly heal. I am pleased that a bi-partisan majority of this committee are co-sponsors of this proposal and many of you have helped significantly in advancing this discussion last session and now again this session.

Law enforcement and firefighters are routinely subjected to catastrophic incidents involving severe injury or death. The individual and cumulative effects of exposure to these incidents while serving our communities has had a debilitating effect on our brave public safety officers, causing many to suffer from and be diagnosed with Post-Traumatic Stress Disorder or PTSD.

With increasing suicide rates for first responders suffering from PTSD, now outpacing on-duty deaths, there is a general consensus that something needs to be done. The Public Safety PTSD Coverage Act will make changes to finally clarify the conditions of liability for worker's compensation benefits for a law enforcement officer or a fire fighter who is diagnosed with post-traumatic stress disorder to ensure the coverage they need is received. Similar legislation has been passed in recent years by several other states, including Minnesota, with negligible impact on overall workers compensation system costs.

While current law provides that an employer is liable for accidents or diseases of its employees if the accident or disease causing injury arose out of the employee's employment, it also requires that for a mental injury to be compensable under the worker's compensation law, the mental injury must result "from a situation of greater dimensions than the day-to-day emotional strain and tension which all employees must experience," stemming from a 1974 Wisconsin Supreme Court Case. However, the day-to-day situations faced by public safety first responders (by the very nature of their occupation) involve death, danger and violence with such frequency that they are much more likely to experience PTSD from the cumulative effect and suffer greatly as a result.

This bill eliminates the "greater dimensions" requirement for coverage of a public safety first responder's work-related PTSD diagnosis, recognizing that while a single event can trigger PTSD, so can repeated exposure to dangerous high stress events (the emotional responses to which may often be very different between any two people). AB 17 requires a preponderance of evidence standard and that the mental injury is not the result of or first reported during a good-faith employment action by the person's employer. Additionally, this bill includes two key compromises between all stakeholders of 32 weeks of covered treatment after the injury is first reported and a life time cap of three applications. Helping public safety employees with the treatment needed to

recover from PTSD and return to work also reduces the long term costs of duty disability and training of new personnel.

PTSD can be treated effectively, and allow those affected to return to protecting and serving the public. It is critical that the men and women we have depended on as first responders that are affected by PTSD have access to treatment and the support they need to recover, both for their own health and those who depend on them.

The Senate Committee on Labor and Regulatory Reform voted in favor of this legislation in a bi-partisan fashion in the 2017 and in the 2019 session moved it unanimously. It passed the Senate in 2019 on a voice vote and was amended with the additional worker's compensation consensus items, now built into AB 17, and voice voted by the Assembly in early spring of 2020. As we look to finally get these critical reforms implemented, AB17 continues to enjoy strong bi-partisan co-sponsorship this Session and has already passed out of the Senate Committee on Labor and Regulatory Reforms unanimously and the full Senate on a 32-0 unanimous vote. I want to thank the members of the Worker's Compensation Advisory Council and its Labor and Management Caucuses for their consideration and support in development of the language of 2019's Senate Bill 511 and now Senate Bill 11/Assembly Bill 17. Please join myself, over 30 of my fellow co-authors and co-sponsors, the Wisconsin Professional Police Association, Wisconsin Chiefs of Police Association, Professional Fire Fighters of Wisconsin, Wisconsin Sheriffs and Deputy Sheriffs Association, and Badger State Sheriffs' Association, Wisconsin Manufacturers & Commerce, and Wisconsin AFL-CIO in supporting the Public Safety PTSD Coverage Act.

Wisconsin Legislative Council



Anne Sappenfield
Director

TO: SENATOR ANDRÉ JACQUE AND REPRESENTATIVE CODY HORLACHER

FROM: Margit Kelley, Senior Staff Attorney

RE: Claims for Worker's Compensation for Post-Traumatic Stress Disorder by Police Officers and Firefighters Under 2021 Senate Bill 11 and Companion 2021 Assembly Bill 17

DATE: February 4, 2021

This memorandum briefly describes the provisions of 2021 Senate Bill 11 and companion 2021 Assembly Bill 17 (collectively, "the bill") that relate to a worker's compensation claim by a police officer or full-time member of a fire department for post-traumatic stress disorder (PTSD). The memorandum also discusses, more particularly, the relationship of those provisions to duty disability benefits.

BACKGROUND

Under current law, a qualifying employment-related mental injury, including PTSD, is covered by worker's compensation. [s. 102.01 (2) (c), Stats.] However, the Wisconsin Supreme Court has held that, in order for a mental injury to be compensable, a person must show that it was caused by unusual stress that is outside the day-to-day emotional strain and tension that may be experienced by all employees.

Specifically, in *School District No. 1 v. Wisconsin Department of Industry, Labor, and Human Relations*, the Wisconsin Supreme Court held that mental injury is covered by worker's compensation only if it results from a situation of greater dimensions than the day-to-day mental stresses and tensions that all employees must experience. This is commonly referred to as the "unusual stress" test or the "greater dimensions" test. [62 Wis. 2d 370 (1974).]

Later court decisions have interpreted this to mean that the stress that caused the disorder must be unusual for someone similarly situated in that type of occupation. In particular, if an event could foreseeably be encountered by personnel in a particular field, then it would not be compensable.

For example, in one decision, the Wisconsin Court of Appeals held that a special weapons and tactics (SWAT) team officer experienced an event that could foreseeably be encountered when the officer shot and wounded a suspect who was armed with a knife. In contrast, in another case the court held that a deputy sheriff experienced a grisly event that was out of the ordinary when transporting a person in custody who self-inflicted fatal wounds with a scalpel that had not been discovered.¹ [*Bretl v. LIRC*, 204

¹ For additional examples of court decisions applying the unusual stress test, see *Swiss Colony, Inc. v. DILHR*, 72 Wis. 2d 46 (1976); *Probst v. LIRC*, 153 Wis. 2d 185 (Ct. App. 1989); *Jensen v. Employers Mut. Cas. Co.*, 161 Wis. 2d 253 (1991); and *Burt-Redding v. LIRC*, Wis. Ct. App. No. 2016AP916 (July 18, 2017, unpublished).

Wis. 2d 93 (Ct. App. 1996); and *County of Wash. v. LIRC*, Wis. Ct. App. No. 2012AP1858-FT (Jan. 9, 2013, unpublished).]

The unusual stress test from *School Dist. No. 1* has also been applied to duty disability cases. The duty disability program provides a lifetime disability benefit for persons in state or local protective occupations who have a work-related permanent disability. [s. 40.65, Stats; and *Random Lake v. LIRC*, 141 Wis. 2d 559 (Ct. App. 1987).]

THE BILL

The bill creates specific circumstances in which PTSD may be a covered injury, if all other worker's compensation requirements are met.²

Specifically, under the bill, a worker's compensation claim by a law enforcement officer or a full-time member of a fire department may be compensable for a mental injury that results in PTSD if the PTSD diagnosis is made by a licensed psychiatrist or psychologist and the mental injury arose out of and in the course of the employment. The bill specifies that the diagnosis does not need to be based on unusual stress of greater dimensions than the day-to-day emotional strain and tension that may be experienced by similarly situated employees.

The bill also specifies that a PTSD claim by a law enforcement officer or a full-time member of a fire department is not compensable if the mental injury is the result of certain actions taken in good faith by an employer. In particular, a claim cannot be based on a good faith disciplinary action, work evaluation, job transfer, layoff, demotion, or termination.

The bill limits the period of disability to 32 weeks from the first report of the injury for which worker's compensation can be paid to a law enforcement officer or full-time member of a fire department for a mental injury that results in PTSD. The bill also specifies that compensation for PTSD is limited to three times in the person's lifetime. The lifetime limit on receiving compensation for PTSD applies regardless of changes in employment.

The bill does not modify the unusual stress test, which would continue to apply under current case law for other work-related mental injuries, such as anxiety disorder or depression. The unusual stress test would also continue to apply to PTSD for other personnel not covered by the bill, such as volunteer firefighters and emergency medical services practitioners, or firefighters and emergency medical services practitioners with a private company.

APPLICABILITY TO DUTY DISABILITY

You asked, in particular, whether the provisions of the bill would apply to a duty disability claim for persons in state or local protective occupations. Very briefly, the answer is no.

First, the language of the bill itself amends only the worker's compensation provisions under ch. 102, Stats., and does not amend the duty disability provision in s. 40.65, Stats.

Second, although there is language under the duty disability provision that applies certain worker's compensation provisions, that incorporation is limited to the procedural aspects for hearing an appeal.

² The bill also includes certain other worker's compensation provisions from 2019 Senate Bill 673, not related to PTSD claims, and not addressed in this memorandum, which were agreed upon and recommended by the worker's compensation advisory council.

Under the duty disability provision, the standards for determining whether a person has a disability that qualifies for duty disability benefits are provided in a separate subsection from the procedural aspects. The separate subsection that provides the disability standard does not incorporate the standards for determining whether an injury is compensable under worker's compensation. [s. 40.65 (2) (b) 4. and (4), Stats.]

Third, while the provision under the bill that creates a standard for PTSD is placed among the procedural statutes incorporated in the duty disability provision, unlike those procedural aspects of worker's compensation, the provision in the bill limits its applicability to determining whether a mental injury qualifies as a **compensable injury under the worker's compensation chapter**. In other words, although the bill creates an evidentiary standard, it is not a procedural standard of the type identified in the duty disability provision, and by its own language, it is limited to a determination of whether a claim is compensable under the worker's compensation chapter.

Lastly, it may be noted that the *Random Lake* decision, cited above, which applied the unusual stress test to duty disability claims, acknowledged that the worker's compensation statutes stand separately from the duty disability statute.

In *Random Lake*, the Wisconsin Court of Appeals noted the fact that the decision in *School Dist. No. 1* was made in a worker's compensation case under ch. 102, Stats., but the court concluded that the policy behind the unusual stress test also exists in duty disability cases under s. 40.65, Stats. The court noted that the "same considerations" are present in both contexts, including the need to have an effective method of evaluating a claim of mental injury without opening the "floodgates" of mental injury claims. [*Random Lake*, at 565 to 566.]

In other words, the court in *Random Lake* found that the *reasoning* applied in *School Dist. No. 1* was persuasive. The court found that the policy behind the decision in the worker's compensation case was equally applicable in the circumstance of a duty disability case, and should have been applied by the administrative hearing examiner. The court did not find that the worker's compensation laws themselves applied.

In summary, the bill does not modify the unusual stress test that currently applies to a duty disability claim for a permanent mental injury. As noted under the bill description above, even for worker's compensation cases, the bill does not nullify the holding from *School Dist. No. 1* for all circumstances. The bill removes the unusual stress test only in the specific circumstance of a worker's compensation claim by a law enforcement officer or a full-time member of a fire department for a work-related mental injury that results in PTSD.

If you have any questions, please feel free to contact me directly at the Legislative Council staff offices.

MSK:jal

Wisconsin Legislative Council



Anne Sappenfield, Director
Jessica Karls-Ruplinger, Deputy Director

TO: SENATOR ANDRE JACQUE

FROM: Margit Kelley, Senior Staff Attorney

RE: 2019 Senate Bill 511, Relating to Claims for Compensation for Post-Traumatic Stress Disorder by Police Officers and Firefighters Under the Worker's Compensation Law

DATE: December 6, 2019

This memorandum briefly describes 2019 Senate Bill 511, relating to a worker's compensation claim by a police officer or full-time member of a fire department for post-traumatic stress disorder (PTSD). The memorandum also provides information regarding questions about the bill that have been raised by the City of Milwaukee.

BACKGROUND

Under current law, employment-related PTSD could be covered as an "injury" by worker's compensation, as a type of mental injury that is recognized by the law. [s. 102.01 (2) (c), Stats.] However, under current case law, in order for the claim to be recognized, a person must prove that it was caused by **unusual stress** compared to other similar employees.

The Wisconsin Supreme Court has held that mental injury is compensable only if it results from a situation of greater dimensions than the day-to-day mental stresses and tensions that all employees must experience. This is commonly referred to as the "unusual stress" test or the "greater dimensions" test. [*School Dist. No. 1 v. DILHR*, 62 Wis. 2d 370 (1974).]

This has been interpreted to mean that the stress that caused the disorder must be unusual for someone similarly situated in that type of occupation. If an event could foreseeably be encountered by personnel in a particular field, then it would not be compensable.

For example, courts have held that a special weapons and tactics (SWAT) team officer who shot and wounded a suspect who was armed with a knife experienced an event that could foreseeably be encountered, while a deputy sheriff who was transporting a person in custody experienced a grisly event that was out of the ordinary when the deputy sheriff witnessed the person self-inflict fatal wounds with a scalpel that had not been discovered. [See, for example, *Swiss Colony, Inc. v. DILHR*, 72 Wis. 2d 46 (1976); *Probst v. LIRC*, 153 Wis. 2d 185 (Ct. App. 1989); *Jensen v. Employers Mut. Cas. Co.*, 161 Wis. 2d 253 (1991); *Bretl v. LIRC*, 204 Wis. 2d 93 (Ct. App. 1996); *County of Wash. v. LIRC*, Wis. Ct. App. No. 2012AP1858-FT (Jan. 9, 2013, unpublished); *Burt-Redding v. LIRC*, Wis. Ct. App. No. 2016AP916 (July 18, 2017, unpublished).]

THE BILL

Senate Bill 511 creates specific circumstances in which PTSD may be a covered injury, if all other worker's compensation requirements are met.

Specifically, under the bill, a worker's compensation claim by a law enforcement officer or a full-time member of a fire department may be compensable for a mental injury that results in PTSD if the PTSD diagnosis is made by a licensed psychiatrist or psychologist and the mental injury arose out of and in the course of the employment. The bill specifies that the diagnosis does not need to be based on unusual stress of greater dimensions than the day-to-day emotional strain and tension that may be experienced by similarly situated employees.

The bill also specifies that a PTSD claim by a law enforcement officer or a full-time member of a fire department is not compensable if the mental injury is the result of certain actions taken in good faith by an employer. In particular, a claim cannot be based on a good faith disciplinary action, work evaluation, job transfer, layoff, demotion, or termination.

The bill limits the period of disability for which worker's compensation can be paid to a law enforcement officer or member of a fire department for a mental injury that results in PTSD to 32 weeks from the first report of the injury.

The bill does not modify the unusual stress test that would continue to apply under current case law for all other work-related mental injuries, such as anxiety disorder or depression.

QUESTIONS FROM THE CITY OF MILWAUKEE

The City of Milwaukee submitted a memo to the worker's compensation advisory council on November 11, 2019, which suggested two potential changes to the bill.

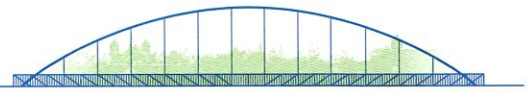
First, the city suggests that language be added to indicate that a mental injury may not be the result of an investigation or notice of investigation into allegations of misconduct. The bill could be amended to accommodate that language, or to re-phrase the list of good faith actions to clearly specify that the list is not exhaustive. However, the bill requires a specific diagnosis of PTSD by a licensed psychiatrist or psychologist, and the Diagnostic and Statistical Manual (DSM) used in those professions identifies certain trauma to which a person must have been exposed. Among the criteria that are required for a diagnosis of PTSD, a person must have direct or indirect exposure to death, serious injury, or sexual violence, or direct or indirect exposure to a threat of one of those traumatic incidents. Accordingly, it appears that an investigation into allegations of misconduct could not be considered to be a cause of mental injury for a PTSD claim by a law enforcement officer or member of a fire department.

Second, the city suggests language be added to require evidence of a link between the PTSD diagnosis and a specific work activity, experience, or situation during which the employee was fulfilling job responsibilities. However, the bill specifies that other worker's compensation requirements must be met, in addition to the professional diagnosis of PTSD. In particular, among those other provisions, the employee must be performing services growing out of and incidental to the employment at the time of the injury, and the mental injury must arise out of and in the course of the employment. Accordingly, it appears that the bill already satisfies this suggestion by requiring that those other conditions of liability for worker's compensation be met.

If you have any questions, please feel free to contact me directly at the Legislative Council staff offices.

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STATE REPRESENTATIVE
Jodi Emerson



91st ASSEMBLY DISTRICT

REPRESENTING EAU CLAIRE

To: Members of the committee on Government Accountability and Oversight

From: Rep. Jodi Emerson

Date: 3/4/21

Re: AB 17

Chairman Knodl and members of the committee,

Thank you for holding this hearing on AB 17. This is a bill that I and the other authors have been working on since the start of last session. Versions of this bill have been presented in previous sessions and we have worked hard to take the feedback and incorporate that into this bill to make it something that works for all of us. This bill passed the Assembly last year and was scheduled for a vote in the Senate when Covid hit and the last session day never happened.

We are all here in this building because we want to serve the public. All of us want to support the work that our first responders do every day to keep us and our constituents safe. We ask a lot of these first responders and we hold them to a high standard, as we should.

It is often said that heroes run to something that others run away from. It is cliché but true. But I want you to stop and think for a few minutes about what those heroes are seeing, experiencing and feeling when they run into what we run from.

Post-Traumatic Stress Disorder or Post-Traumatic Stress Injury as it is sometimes called does impact our first responders more often than other workers. It is because of the repeated exposure to the traumatic events that they are seeing every single day of their careers. Over the years, we have learned much about mental health and how to protect people from stress that can negatively impact their jobs, their lives and their families. Departments across the state have implemented programs to help workers deal with the stress and strain their jobs cause. But sometimes these programs aren't enough. Sometimes the cumulative effect of this stress is too much and time off or additional counseling and support is needed. We want to make sure that these heroes get the help they need and deserve so they can return safe and healthy to their jobs.

First responders are vital to keeping our communities safe but communities across the state are struggling to recruit and retain the people choosing to go into these jobs. Let's make sure that we can do everything possible to make these jobs safe (both mentally and physically) for those that work to keep us safe.

You will hear from some people that this bill is not everything they want or need it to be. I'm committed to putting out a bill as soon as this is passed to fill in the gaps. But it is important that we pass this bill as quickly as possible. We are losing first responders in our state because we haven't passed it yet and aren't supporting those that support us. This is something my community has become acutely aware of in 2021.

This bill is supported by both parties and several groups you will hear from today. Please pass this bill and let's make sure we are protecting those who are always protecting us.

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My name is Melissa Wiesner and I have been a law enforcement officer for 19 years working from patrol to Detective Lieutenant. I am speaking to you today as an officer, a member of the WI law enforcement death response team, and as a peer support team member. Shortly after starting this career at the age of 20, I realized how intense and traumatic the events that we deal with really are. I got into this career fully prepared to see dead people, traffic fatalities, and homicide victims. I expected to have to put my life in danger and go toward the shots so that I can help people and save lives. What I didn't realize was the severe lack of support there would be to help save my life and my partner's lives when we really needed help.

Twenty-two; that is how many police officers we have lost to suicide in the last five years in Wisconsin. That is almost twice as many as have been killed or died in the line of duty during that same time period. Sadly, we know there were actually many more than 22 officers we lost because there is still a stigma around suicide and we know many suicides don't get reported. I know this because like I said, I am part of the Wisconsin Law Enforcement Death Response Team (LEDR), a group of 14 volunteers whose mission is to respond to and assist these agencies that lost officers to suicides or in the line of duty. When we respond to a suicide, we are frustrated because there should have been ways to prevent many of these suicides from happening. Of the information I have from majority of the suicides I have knowledge of, the officer was dealing with PTSD and/or cumulative problems, not just one horrific incident.

A lot is required to be a desirable candidate for law enforcement such as being psychologically, cognitively and physically fit. Society demands us to be unbiased, compassionate, empathetic, caring people. Yet we are required to deal with trauma and death on a frequent basis without faltering or showing any emotion. I truly don't understand how we can be expected to be so human and yet so inhumane at the same time. These are completely unrealistic expectations. We are all humans, created equal, and just because we put on a badge it doesn't change our DNA and give us the ability to cope with stress and trauma any differently than other human being. The only thing the badge does in this sense is that it exposes us to a more frequent amount of stress and trauma.

On the flip side, I have my master's degree in counseling. I am on critical incident stress management teams, peer support teams, a peer support trainer, and a resiliency trainer. I try to help our officers,

firefighters and EMTs because of the lack of help they get elsewhere. I can assure you from working in law enforcement and mental health that PTSD is real and our people are struggling. I know because I see it and I deal with it on a far too frequent basis. Today's society has made the struggle even worse as we are now not only fighting evil daily, we are also seen as the evil in some people's eyes. We and our families are being targeted for violent crimes just because we took an oath to serve and protect and wear the uniform and badge. What used to be a prestigious and respected profession is now being looked down upon and ridiculed by some. At the agency I work for, I am part of our hiring team and it is getting harder to get good candidates to want to do this job anymore and then it is even more difficult to retain them. This is an even bigger reason why we need to take care of and retain our good, veteran officers.

We have been working hard to lift the shroud around first responder suicide and stigma around asking for mental health help. Now that it is finally becoming more "acceptable" to be open about their struggles and needing professional help, we need officers to know that the help is attainable and affordable without having quit their job or worry about personal finances and how it will affect their family. We don't want easy outs or free money. Most Officers don't want to feel this way and don't easily or often admit they have a problem or are feeling this way. It's when it gets so bad they can't function anymore that they ask for help. When it gets to that point, we need to have proper procedures in place and this bill would cover that. I know of several officers who couldn't get the help they needed because they didn't have enough benefit time needed for treatment and also couldn't afford to have unpaid leave while they got treatment. An officer should not have to weigh their mental health against paying bills.

PTSD affects daily life; people can't eat, sleep, enjoy life, they can be depressed, have intrusive thoughts, no energy and it's a vicious unending cycle without help. So officers work as zombies, or they quit and society loses a good trained officer only to have to invest more money to hire and train someone new. Or tragically, officers get rid of the pain and feeling of being a burden and take their own life to end the pain. After suicide there are so many more victims and problems within the surviving officers and the deceased officer's family. It's not just the loss of one person.

When an officer is hurt at work and breaks their leg during an incident you don't tell them to walk it off. We don't say, give it time to heal, you don't need a doctor, walk on it daily for hours while still taking calls and chasing after people. Don't take medication or think about the constant nagging pain of your bone being broken in half while you are dealing with calls and making life and death split second decisions. We don't judge the officer as being weak or less fit because the other officers on scene didn't break their leg on that same call. We don't say breaking their leg was a foreseeable or expected injury given the circumstances so you aren't eligible for worker's compensation. You know why we don't do that, because it doesn't make sense. It's absurd to have an injured person do this job, it's not possible. They go to the doctor, get a diagnosis, get medical attention, heal and come back to work. So why is it any different when an officer has PTSD? Just because it isn't visible, doesn't mean it isn't there or real.

PTSD is a medically recognized and diagnosable mental illness and there is help for it. Why aren't we allowing our people to get help and wanting them to get back to work?

Much of PTSD is cumulative stress so basing it off of one incident isn't fair. There may be five of us at a scene and only one of us ends up developing PTSD symptoms following the incident. It doesn't mean that individual is weak or less resilient. Maybe over the past five years they have been to a dozen calls like this traumatic incident already, maybe they just came from a different critical incident, maybe the victim looks just like their spouse or child. PTSD is not something you can decide on it happening to you or when it will affect you much like you can't decide when a bone may break. You can do everything right physically and psychologically but it can still happen. Much like we wouldn't turn our backs on the officer with the broken leg at work, we shouldn't turn our back on the officer with mental health illness, especially one they can get help with and get back to work.

We are in the profession because we want to help and we are still here throughout the chaos because we care and are good at what we do. Allow us to get medical help when we need it and come back to the job. Allow us to live and keep our lives and our families' lives in tact while we get help. Not only is this the fiscally responsible thing to do, it's the right thing to do for our communities and the first responders involved.

WISCONSIN PROFESSIONAL POLICE ASSOCIATION

Law Enforcement Employee Relations Division • Supervisory Officers Relations Division • Civilian Employees Relations Division

MEMORANDUM

DATE: March 4, 2021

TO: ASSEMBLY COMMITTEE ON GOVERNMENT ACCOUNTABILITY & OVERSIGHT

FROM: Jim Page, retired
Onalaska Police Department

RE: 2021 Assembly Bill 17

If I had my preference I would be addressing you in person, but I appreciate the opportunity to share my story.

On March 29th 2010 I responded to a domestic disturbance on a mutual assist agreement with the La Crosse Co. Sheriffs Department. The call was an estranged husband had entered his wife's house. Two of his 3 daughters were in the house at the time. Following an argument, he stabbed his wife 2 times. She fled and the girls were able to lock him out of the house. He then set the house on fire with his girls in it. When I arrived with a deputy we got the girls out of the house and cleared the rest of the house, but didn't find the husband. We went outside to find him. The house was fully engulfed, there were explosions from cars in the garage and windows blowing out of the house. As we were going to move our squads away from the fire the father came from the back yard with a butcher knife in his hand. He locked eyes with me and never looked away. I was yelling commands to get on the ground and to drop the knife. He refused and kept coming. As he got about 10 feet away from me, he brought the 15" knife over his head so he could stab downward. I was forced to shoot him.

This call was very dynamic, but it doesn't rank in the top 10 of horrible calls that I've responded to. I am frequently reminded (especially at night when it's quiet or I'm trying to sleep) of 18 month old Sophie being strangled between the top of a playpen and a heavy box. Her caretaker put the box on top of the pen to keep her inside. Also, 23 year old Malcolm who went missing. He was found after 2 weeks hanging from a noose. It was in July as you can imagine the scene was one from a horror movie. Another is 26 year old Neala. She walked away from a bar at bar time in frigid temperatures. At about 8:30 that night (18 hours after she left) we were looking for her in a swampy area with train tracks going through it. I looked through a culvert under the tracks. She wasn't in there. I turned around and she was frozen in the ice with her eyes wide open, staring at me. Her fingertips were worn down to bleeding from her trying to claw her way out of the ice.

I understand that these descriptions can be vivid and quite disturbing (nearly any officer could write a very similar story). I tell them to illustrate that many of the calls that we respond to don't just go away. They linger and haunt for years to come. I have had counseling, I've had medication for depression, anxiety, sleep problems and nightmares. Real life police work is very rewarding. I LOVED MY CAREER! Also, it's not at all like TV would have you believe. Many of us end up trying to address these issues on our own. Many turn to self-medication, alcohol, drugs and divorce among other issues.

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I was able to go back to work about a month after the shooting. I was on the road for about two and a half months. I had a meltdown in the squad room of the Onalaska Police Department. At this time I was diagnosed with PTSD and I didn't see the inside of a squad for 7 months. I was able to keep working for 4 more years, but the traumatic calls kept coming. My last two days taking calls for OPD consisted of a friend of mine since childhood and a sergeant with the La Crosse Co Sheriffs dept shot himself. The next morning, I took a call of an elderly man that, according to the caller, had fallen. Upon my arrival I found a 70ish year old, George that had put a 44 magnum to his temple. The scene was horrific and I'll spare you the details. But that, coupled with my friend's suicide ended a huge part of my life. My mind couldn't ignore trauma and I couldn't keep bringing it home to my family - who had also been deeply impacted.

This is when I had to apply for worker's compensation benefits. I understand that there are procedures that have to be followed. The City of Onalaska was very supportive of me receiving workers comp. Unfortunately, a diagnosis of PTSD, when looked at by the insurance company (CVMIC) is compared to a 1974 case of a Milwaukee teacher saying "stress" is to be expected in the line of duty. There is no comparison between stress and PTSD. I was told by this insurance company that if I had let this man stab me, I would have been covered. Then I would have had a physical injury that they would cover. They told me that by case law they COULDN'T cover my claim. I was then denied benefits. They told me that getting a claim of PTSD approved was almost impossible. The City of Onalaska filled out the paperwork for my DD, but it was done incorrectly. They did then write a letter in support of me receiving DD. I eventually had to have a psychiatric evaluation. This entire process took well over a year. My family was without income. I had to hire an attorney. I was approved for disability. That was the benchmark for workers comp, so that was also approved. Backpay was about \$55,000, but the attorney fee was just under \$18,000. By this time we were behind on EVERYTHING and to have to lose that money was very disheartening. The feeling I was left with was that I was merely a number. I don't like to talk about my achievements, but here I know that the need to pass this legislation is on the line. I've been called a hero, I was the first officer in the history of this country to be awarded the Congressional Badge of Bravery among many other awards, and have the diagnosis that nearly took my life and should have been more than sufficient to be given DD. The stress and anxiety that was already affecting me over this unseen disease and losing my income was compounded by the constant rejections from people that have no idea what a police officer or any emergency responder does.

Since medically retiring from the Onalaska Police Department I have used what has happened to me and speak at colleges, police academies and officer involved shooting panels. I have done a lot and don't regret it. I also don't want to waste it. Emergency responders need to know that they aren't the only ones that are struggling. Last year my wife Angela and I lobbied at the capitol for this legislation, our heroes need to be taken care of without all of the hoops to jump through and the worry that goes with the process that is in place now. I'm asking you to please pass this legislation for all of us.

Thank you for your time, and for your consideration.

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MEMORANDUM

DATE: March 4, 2021

TO: ASSEMBLY COMMITTEE ON GOVERNMENT ACCOUNTABILITY AND OVERSIGHT

FROM: Jim Palmer, Executive Director *JLP*
Wisconsin Professional Police Association

RE: 2021 Assembly Bill 17

Representing over 10,000 members from more than 300 local association affiliates, the Wisconsin Professional Police Association (WPPA) is the state's largest law enforcement group. Our mission is to protect and promote public safety, as well as the interests of the dedicated men and women that serve to provide it. In that vein, we offer this memorandum to express our ardent **SUPPORT of 2021 Assembly Bill 17**, which would create specific circumstances in which post-traumatic stress disorder (PTSD) may be a covered injury under Wisconsin's Worker's Compensation Laws.

For decades, far too many first responders in Wisconsin have been significantly harmed by the fact that they could not obtain worker's compensation benefits and protections after developing PTSD as a result of the stressful and dangerous incidents they had to endure in the line of duty. This began in 1974 when the Wisconsin Supreme Court held that, in order for an employee with PTSD to receive worker's compensation, they "must show that the mental injury was caused by unusual stress of greater dimensions than the day-to-day emotional strain and tension experienced by similarly-situated employees." This ruling, in a case that dealt with a teacher's claim for worker's compensation benefits, has served to prevent first responders from receiving benefits on the basis that the horrific duty-related incidents that have caused PTSD "was what they signed up for." As a result, first responders suffering from PTSD have found themselves faced with the impossible choice of either having to return to work without the ability to first get the help that they need or to leave the profession entirely. This is a disservice to both first responders and the public.

Since 1974, however, the medical community's understanding and acceptance of PTSD has changed dramatically. The diagnosis and treatment of PTSD is now well-established, and many states throughout the country are updating their worker's compensation laws to enable officers to get the help they need and deserve. Medical professionals and public policymakers across the United States have demonstrated a growing recognition of PTSD and of the obligation to take care of those that incur this devastating mental injury in the course of their service to their communities. AB 17 reflects the value that we ought to place in the duties performed by our dedicated first responders and take care of those after they have suffered in their service to protect us.

The measure before this committee has been approved by the Wisconsin Worker's Compensation Advisory Council, and it enjoys widespread support in both chambers of the legislature. For that reason and those outlined herein, we respectfully request that this committee approve AB 17 as soon as possible in order to advance this reform of extraordinary importance to our law enforcement community and other first responders.

Thank you in advance for your consideration.



To: Members, Assembly Committee on Government Accountability and Oversight
From: Badger State Sheriffs' Association (BSSA)
Wisconsin Sheriffs and Deputy Sheriffs Association (WS&DSA)
Date: March 4, 2021
RE: Comments in Support of Assembly Bill 17

BSSA and WS&DSA submit these comments in support of Assembly Bill 17 (AB 17). BSSA is a statewide organization representing all of Wisconsin's 72 Sheriffs. WS&DSA is a statewide organization representing over 1,000 members, including Sheriffs, Deputies, and jail officers. BSSA and WS&DSA have a joint legislative committee and work closely on public safety issues of concern to our members.

Everyday law enforcement officers across the state work to serve and protect the public's safety. As part of the job, we regularly encounter situations that can be violent, traumatic, and unimaginable. Over time, these events can cumulate, and individuals can struggle with physical and emotional conditions.

AB 17 is an important step for our state and provides reasonable and necessary worker's compensation coverage for a public safety-first responder's post-traumatic stress diagnosis (PTSD). Under the bill, the PTSD diagnosis must be made by a licensed psychiatrist or psychologist. Key to the bill is the exemption of the "greater dimensions" standard – which recognizes that a mental injury can develop not just from one traumatic event, but numerous incidents over time.

The bill also includes important safeguards to ensure the diagnosis is not a result of several actions, including a job transfer, layoff or demotion. In addition, the bill provides 32 weeks of coverage – a time frame to allow the officer to receive the treatment and time to heal and hopefully return to work.

Finally, we would like to acknowledge the hard work and research the authors, Sen. Jacque and Rep. Horlacher, have put into this bill over the years. Also, we wanted to recognize our fellow law enforcement and fire fighter organizations that have continued to tirelessly fight for this coverage.

This legislation is essential to ensure our first responders struggling can get the help needed. On behalf of BSSA and WS&DSA we ask you support this bill.

Thank you for your consideration.



JACKSON POLICE DEPARTMENT

N168 W20733 Main Street, Jackson, WI 53037

Integrity - Respect - Courage

RYAN D. VOSSEKUIL
CHIEF OF POLICE

PHONE: (262) 677-4949
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Written Testimony of: Chief Ryan Vossekuil, Jackson Police Department

Before the: Assembly Committee on Government Accountability and Oversight

March 4, 2021

I'd like to thank the chairman and the committee for the opportunity to provide testimony regarding Assembly Bill 17. My name is Ryan Vossekuil and I serve as the Police Chief in the Village of Jackson. I'd like to share with you my department's experience as it relates to post-traumatic stress disorder and the worker's compensation claim process. The officer I'm going to discuss today was a ten-year veteran police officer with our department.

On July 1, 2016, Jackson Officers responded to a domestic violence incident in the village. A woman had called 911 to report that a man had forced entry into her apartment and was assaulting her and had threatened to kill her. Screaming could be heard on the line when the call abruptly disconnected. When officers arrived on scene, they entered the apartment and found the woman had been taken hostage in her shower. The man, a 58-year-old former boyfriend of the woman, held her head with his arm and held a knife to her face.

The man ignored commands to drop the knife and our officer was forced to use deadly force to save the woman's life. This officer-involved death was investigated by the Wisconsin Department of Justice – Division of Criminal Investigation. Ultimately, the shooting was reviewed by the Washington County District Attorney and determined to be justified.

The officer returned to duty several months later and dealt with ongoing flashbacks to the shooting. In August of 2019, the officer responded to a domestic violence call. As he walked up the driveway, a man lit off a firecracker inside the residence. After that incident, the officer began experiencing sleeplessness, panic attacks and flashbacks to the 2016 officer-involved shooting. The officer became unable to work in September of 2019. After nearly a year of treatment, the officer resigned and ended his law enforcement career in 2020 at the age of 32.

Officer Henning's claim for worker's compensation was denied. According to our insurance carrier, the shooting was not considered "extraordinary stress".



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Our officer upheld his oath to protect our community, but unfortunately the state's "extraordinary stress" standard prohibited the officer from receiving the benefits he and his family need and deserve. For the benefit of police officers and firefighters that will experience similar situations in the future, I respectfully request that you vote in support of this measure.

Thank you for your consideration.

Respectfully,

Chief Ryan VossekUIL



March 4, 2021

To: Chairman Knodl and Members of the Assembly Committee on Government Accountability and Oversight

From: Pat Mitchell, President, Wisconsin Chiefs of Police Association

Re: Support AB 17, Workers Compensation Coverage for Law Enforcement Officers with PTSD.

Thank you Chairman Knodl, for your willingness to hold a hearing on this bill. We want to thank the Assembly authors Representatives Cody Horlacher and Jodi Emerson and Senate authors Andre Jacque, Van Wanggaard, and Janet Bewley for introducing this important bill.

We urge support of Assembly Bill 17.

This legislation (as 2019 SB 511/AB 569) passed both the Senate Labor and Regulatory Reform and Assembly Criminal Justice and Public Safety Committees unanimously last session and passed the full Senate and Assembly on voice votes. Unfortunately, after minor adjustments to SB 511 were made by the Assembly at the end of session the Senate did not meet to concur on the changes. More recently, its companion bill, Senate Bill 11, passed the State Senate 32-0.

Assembly Bill 17 will provide a path for law enforcement officers, and others in public safety, who suffer from PTSD, to get insurance coverage, but more importantly, to get the help they need.

The Wisconsin Chiefs of Police Association represents more than 700 communities across this state. As Police Chiefs, we oversee the well-being of more than 15,000 men and women who wear a badge every day and take an oath to protect and serve citizens in their communities and across this state.



March 4, 2021

TO: Members
Assembly Committee on Government Accountability and Oversight

FR: Brian Dake
Legislative Director
Wisconsin Independent Businesses

RE: 2021 Assembly Bill 17 relating to: various changes to worker's compensation law.

Chair Knodl and committee members my name is Brian Dake, Legislative Director for Wisconsin Independent Businesses. Thank you for the opportunity to testify in support of 2021 Assembly Bill (AB) 17.

By way of background, Wisconsin Independent Businesses (WIB) was formed in 1977 to provide small, independent businesses with an effective voice in the legislative and regulatory activities of state government. We proudly represent thousands of small businesses throughout Wisconsin.

Most of our members (approximately 85%) own and operate businesses that fit within the legal definition of a small business – fewer than 25 employees and/or annual gross revenues of less than \$5 million. We represent local service sector providers, hometown manufacturers, and Main Street retailers.

Legal compliance with government-mandated programs such as worker's compensation is challenging for small business owners. Retaining a Professional Employer Organization (PEO) to assist in these duties is a viable and cost-effective option.

Most states allow client-sponsored worker's compensation coverage within a PEO agreement. AB 17 would add the State of Wisconsin to that list.

Allowing small employers to keep their incumbent worker's compensation insurance carrier regardless of their relationship with a PEO is a meaningful and beneficial change to the Wisconsin worker's compensation law. For that reason, we respectfully request your support of 2021 Assembly Bill 17.

Thank you in advance for your consideration.