



# Intelligence

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ASSOCIATION OF GOVERNMENTAL RISK POOLS

## PTSD Presumption: a Known Unknown for Pools

By Lynn McNamara

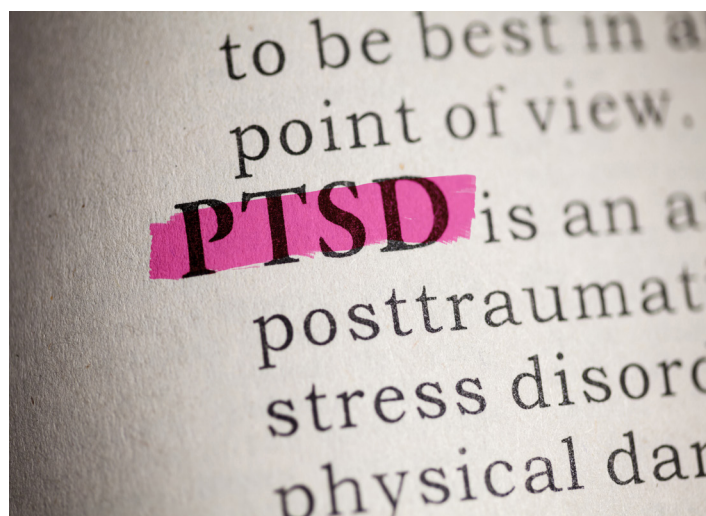
Legislation has been enacted or is being considered in several states to create a presumption that [Post-Traumatic Stress Disorder](#) (PTSD) is compensable for at least some public safety workers.

PTSD joins heart and lung disease, Hepatitis C and cancer on the list of workers' compensation presumptions commonly available for public safety employees such as firefighters and law enforcement officers.

PTSD presumptions present a host of unknowns for public entity risk pools. There is variance in PTSD presumption laws by state, as well as differences in other underlying state-specific workers' comp regulations. There is a lack of PTSD claims experience, making it difficult to predict likely costs. Unlike heart disease and cancer, which can be conclusively diagnosed by standardized medical tests, PTSD and similar disorders rely on a medical professional's evaluation of self-reported symptoms.

These factors create real hurdles for pools to effectively estimate the financial impact of a PTSD presumption and develop effective risk management strategies to mitigate the frequency and severity of PTSD claims.

Although it may be difficult to estimate the ultimate number of claims or their cost, understanding variables that impact both measures can provide insight into underwriting a PTSD presumption. Several of the variables apply not only to PTSD, but also to other presumptive conditions.



These variables also explain how one pool's experience with PTSD could vary dramatically from another's.

### Ability to Predict Claims

Effective underwriting relies on predictive data, which becomes a notable challenge when trying to plan for PTSD claims.

There are national studies suggesting a proportion of the population, and first responders, likely to develop PTSD. These studies may be the subject of scrutiny and debate, and there is no singular data source providing universally agreed-upon data.

One often-quoted source is a [2017 survey on first responder mental health](#) commissioned by the University of Phoenix. That survey of 2,000 U.S. adults

## PTSD Presumption Variables

These eight variables may impact a pool's ability to predict the frequency and severity of claims following the adoption of a PTSD presumption law:

1. Ability to predict the frequency of mental health conditions, including whether mental health claims were already compensable in the state's workers' comp system.
2. Employees covered by the presumption.
3. Prerequisites to the filing of presumption claims.
4. Mental health conditions subject to the presumption law.
5. Medical professionals eligible to diagnose the presumptive conditions.
6. Whether the presumption law includes a list of specific triggers for eligibility.
7. The employer's ability and basis upon which to rebut the presumption.
8. The culture as it relates to public safety mental health.

employed as firefighters, police officers, EMTs, paramedics and nurses found:

- 84 percent had experienced a traumatic event on the job.
- 85 percent had experienced symptoms related to mental health issues.
- 10 percent had been diagnosed with PTSD.

Statistics provided by the [National Center for PTSD](#) indicate that 60 percent of men and 50 percent of women experience a traumatic event at some point in their lives. Women are more than twice as likely as men to develop PTSD, according to the Center.

In some states, mental health conditions, with or with-

out a physical injury, were compensable before the introduction of a PTSD presumption. Pools in these states may have historical frequency data upon which to base PTSD claim projections. Even if such data are limited to mental health claims also presenting a physical manifestation, some data is more helpful than none.

## Covered Employees

There is variation in employee groups covered by PTSD presumption laws. State laws might include police officers, firefighters, EMTs, corrections officers, dispatchers, and parole and probation workers.

Paid-on-call and volunteer public safety personnel are sometimes, but not always, covered by PTSD workers' comp presumptions.

The broader the universe of covered employees, the greater the potential for claims. Understanding the scope of any presumption as it applies to employees covered within the pool is key to projecting claims and identifying possible loss mitigation efforts.

Although unlikely to be covered by a public entity risk pool, state employees and private sector personnel in public safety roles may also be covered by PTSD laws. If the presumption applies to non-municipal workers – such as state police or private ambulance companies – there could be more data available over time to help estimate claim frequency and costs.

## Prerequisites and Timing Limitations

The window within which PTSD presumption claims can be filed can have a big impact on the number of claims a pool might expect.

Presumptions without front-end eligibility limitations allow an employee to file a claim after a week on the job. Those without back-end limitations allow an employee to file a claim years after retiring. Some states have parameters for an employee to be on the job a minimum number of years before the PTSD presumption will apply to an eligible claim. Similarly, there may

be a defined window after a termination, after which time the PTSD presumption would no longer apply.

For example, Florida's provision calls for presumption claims to be noticed within 52 weeks of the traumatic event leading to the PTSD diagnosis. In Vermont, the PTSD diagnosis must be made within three years of the first responder's last day of active duty.

Baseline testing is another factor that can lower frequency of PTSD claims. In Washington, public safety employees hired after June 7, 2018 must complete a pre-employment psychological exam to rule out the presence of PTSD as a prerequisite for the presumption to be applied.

### Conditions Subject to the Presumption

In some cases, presumption laws identify specific diagnoses that trigger the presumption, such as PTSD or Acute Stress Disorder. If this is the case, the statute may further define those conditions eligible for the presumption by referencing standardized codes under the American Psychiatric Association's [Diagnostic and Statistical Manual of Mental Disorders](#) (DSM).

On the other hand, some laws more broadly define claims eligible under a PTSD presumption. For example, in Vermont a "mental condition resulting from a work-related event or work-related stress" is compensable if it is extraordinary and unusual compared with the stress of all workers, and the predominant cause of the mental condition is work.

Narrowly defined mental health conditions with specific criteria to evaluate status will likely lower frequency of PTSD claims and make it easier to estimate their costs. Defined mental health conditions also make it possible for a pool to be more targeted with risk management initiatives.

### Eligibility to Diagnose

Presumption laws vary in terms of which medical professionals can make an eligible diagnosis of PTSD. In some cases, a presumptive diagnosis can only be made by a licensed psychiatrist. Other states allow a

### Growing Number of States Pass PTSD Presumption

A growing number of states have enacted changes to their workers' compensation statutes to create the presumption that PTSD in first responders is compensable. This article focuses on the variables in the laws of six states: Florida, Idaho, Maine, Minnesota, Vermont, and Washington.

Since late May 2019, three more states – Connecticut, Nevada and Oregon – have approved and signed presumption laws for first responders. Other states continue to consider similar legislation.

AGRiP has developed [a table](#) that provides links to the statutory provisions in these states and summarizes the variables that may affect claims and costs for pools. We welcome [members' input](#) to continue updating and refining this resource.

PTSD diagnosis by a psychologist, as well.

The longer the list of medical professionals who can diagnose a presumptive condition, the greater the possibility of claims.

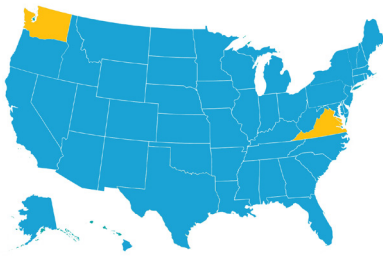
Once again using Vermont as an example, the PTSD diagnosis for a presumption claim can be made by a mental health professional which may include a clinical social worker, mental health counselor, or alcohol/drug abuse counselor.

### Triggering Events

Another nuance that makes it difficult to translate one pool's experience with PTSD claims to another's includes whether only certain events can trigger a PTSD presumption claim. And, not all laws require the specific triggering event to occur at work.

In some states, a single unspecified event can trigger the PTSD presumption. Other states list events that qualify as trauma-inducing for the presumption to apply. Such events might include directly witnessing a death or murder, treating a person who has been grievously injured and who dies in transport, or seeing

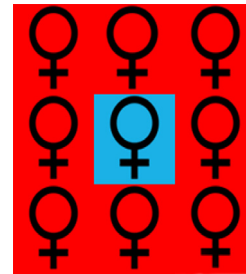
## About PTSD



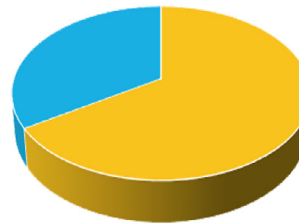
Approximately **3.5%** of U.S. adults - about **8 million people** - are affected by PTSD. That's about the population of Washington or Virginia. [National Alliance on Mental Illness](#)



Among first responders, **84%** say they have experienced a trauma on the job, and **85%** say they have experienced mental health issues. [University of Phoenix, 2017](#)



An estimated **10 of every 100** women develops PTSD, making them more than twice as likely as men to be afflicted. [National Center for PTSD](#)



**34%** of first responders have been formally diagnosed with PTSD. [University of Phoenix, 2017](#)

a deceased child. The Florida statute lists 11 specific events that can be associated with PTSD presumption claims.

Broad PTSD presumption language doesn't require the worker to cite a specific traumatic event. In these cases, cumulative work stress can create a scenario eligible for the PTSD presumption. At least at the outset, the number of PTSD claims from cumulative stress will be very difficult to anticipate.

If triggering events are listed and named, and cumulative stress is not allowed under the PTSD presumption law, a pool may be better able to project the likely number and cost of claims using public safety incident reports as a baseline.

Another important variable is whether the law distinguishes a disorder caused by a traumatic event from one caused by an internal investigation with the potential for termination. Although most statutes note that employee disciplinary actions cannot be the cause of a presumption claim, others may be silent.

### Ability to Rebut

Most PTSD presumption laws include some ability for the employer to rebut the presumption, but the basis for doing so is far from standardized. The more difficult it is to rebut the presumption, the more likely it is that PTSD claims will be accepted and paid.

Although the specific language for rebutting a PTSD presumption may be the same from state to state, its interpretation and application can differ. In current laws, the most common language for rebuttal is to require "clear and convincing" evidence the condition is not work related. Other laws require a "preponderance of the evidence" or rebuttal by "substantial factors."

What constitutes "clear and convincing evidence" in any state will be determined by legal precedents in that state. As a result, each pool's experience rebutting a PTSD presumption claim, and thus the frequency and severity of its claims overall, will be unique.

## Public Safety Culture

The courageous and daring culture of public safety is often cited as a contributor to internalized stress that leads to mental health issues, or even suicide, among first responders, and stigmatizes reporting of those issues.

Thankfully, this dynamic appears to be changing as public safety agencies grapple with the reality of first responder mental health challenges and as state laws recognize the importance of mental wellness. As an example, Florida law includes a requirement for employers of first responders to provide education and training related to mental health awareness, prevention, mitigation, and treatment.

Where there are concerted efforts to bring mental health issues to the forefront and support for reporting and early treatment, there are likely to be fewer presumptive PTSD claims in the long-term. However, there could be related training or treatment costs

### A Risk Management Opportunity

Anticipating the passage of a PTSD presumption law in its state, Oregon's [Special Districts Insurance Services](#) (SDIS) decided last fall to move ahead with a risk management program for the largest segment of its membership: firefighters.

Special Districts Executive Director Frank Stratton advanced the effort to contract with an employee assistance program (EAP) tailored to first responders, and offer it to every firefighter covered by SDIS.

To overcome worries that an EAP service might be too generic for public safety, SDIS worked with the Oregon chapter of IAFF to add mental health counselors well suited to deal with public safety trauma and trusted by firefighters. SDIS expanded the number of free visits under the firefighter EAP model to six.

SDIS' tailored EAP went into effect January 1. On June 13, Oregon passed PTSD legislation that will go into effect this fall.

in order to actively manage mental health and avoid PTSD.



And, as with any claim scenario, awareness and education may at first generate an increase in claims frequency. Over time, though, appropriate mental health management should serve to reduce PTSD incidents.

### The Challenge for Pools

Underwriting PTSD presumption claims and risk management to avoid them is a challenge for all pools with newly-enacted legislation. Understanding the factors that will affect the number of cost and claims in the context of a pool's own legal and regulatory environment will go a long way toward more accurate estimates and effective management of this new risk.

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## The First PTSD Presumption: Vermont

Vermont was the first state to adopt a PTSD presumption specifically for first responders, passing a law that went into effect on July 1, 2017. That's meant breaking some new ground and paving the way says Joe Damiata, director of risk management services for the Vermont League of Cities and Towns (VLCT).

The Vermont presumption law is broad, compared with some of the statutes subsequently enacted in other states. The presumption extends to all emergency responders, can be diagnosed by any number of certified or licensed mental health professionals, and provides all benefits under existing workers' compensation law without limitations.

"So far we have seen fewer claims than anticipated, but it's too early to tell what the long term effect will be," says Damiata. Through May 2019, the pool had received 23 presumption claims under the law. Eight were simply a notice of exposure to a traumatic event. Of the remaining 15, six claims were accepted and seven were denied. Two are still in the evaluation phase.

The pool has paid \$49,500 to date on the six accepted claims. Four of the accepted claims were medical only, and two involved time loss. Most claimants are returning to work relatively quickly, says Damiata.

An October 2018 decision from the Vermont Department of Labor, [Bergeron v. City of Burlington](#), provided clarification to the new presumption, essentially saying that no one is eligible to claim the benefit of the presumption until July 1, 2020. This ruling may temporarily reduce claims subject to the presumption, however there may still be eligible claims based on the non-presumptive statute.

VLCT's experience highlights additional complexity in adjusting these claims, because in many cases the covered public safety workers serve multiple Vermont public entity employers. It's a challenge with presumptive claims like cancer and stress to figure out when – and for which employer – the exposure that resulted in the claim occurred, Damiata says, noting that some claims have been referred to the state's Department of Labor for guidance.

Peggy Gates, VLCT's workers' compensation claim manager, wonders if this may be the calm before the storm. She's concerned about the potential for many more claims after July 1, 2020, and about the impact of permanent total disability claims and vocational rehab for those who are unable to return to work.

"We've had two loss time claims already, and another one possible," she says. Vermont law provides for vocational rehab if a worker can't return to a job at the same average weekly wage as prior to the loss occurring, which means that some claimants are likely to be eligible for job retraining.

Damiata has been watching the presumption laws passed in other states, some of them much more restrictive than Vermont's, knowing that once a law is on the books, it's hard to dial it back.

"Other states are learning from us," he says. Contact [Joe Damiata](#) for additional information about VLCT's experience.

## PTSD Information Resources

- [American Journal of Psychiatry - post-911 analysis of acute stress disorder, PTSD and depression in disaster or rescue workers](#) by Carol S. Fullerton, Ph.D., Robert J. Ursano, M.D., and Leming Wang, M.S.

*This 2004 study focused on the effects of a disaster on those workers exposed to an airplane crash, comparing 207 exposed disaster workers with 421 unexposed comparison subjects after two, seven, and 13 months after the crash.*

- [NIH study of mental health among 9-1-1 operators](#) by MM Lilly and CE Allen of the Department of Psychology at Northern Illinois University.

*This 2015 study focuses on 911 operators compared with other emergency responders, measuring the self-reported prevalence of current probable PTSD among a sample of 808 telecommunicators from across the United States.*

- [U.S. Substance Abuse & Mental Health Services Administration - supplemental research bulletin on first responders](#)

*This May 2018 publication compiles research on behavioral health conditions, including PTSD, in EMTs, firefighters, and police officers. It also includes information on risk and protective factors for these workers before, during, and after a traumatic event, and compiles behavioral health interventions for first responders.*

- NCCI research briefs:  
[On PTSD](#)  
[On Presumption](#)

*These two recent reports (May 2019 and November 2018, respectively) by the National Council on Compensation Insurance (NCCI) provide information about PTSD and its potential impact on the workers' comp system, and examine the prevalence of presumption laws across the country and the lack of data that makes it difficult to project cost impacts.*

- [National Alliance on Mental Illness - estimate of PTSD in general population](#)

*This 2017 summary of PTSD prepared for this not-for-profit grassroots mental health organization includes a projection of PTSD in the general population.*

- [University of Phoenix - Study of PTSD in First Responders](#)

*This page summarizes the results of a 2017 survey conducted online by Harris Poll on behalf of the University of Phoenix. It included 2,004 U.S. adults aged 18 and older who are employed as either a firefighter, police officer, EMT/paramedic, lifeguard or nurse. Figures were weighted where necessary to bring them into line with their actual proportions in the first responder population.*

- [Force Science Institute - results from Washington State Study on Corrections Workers](#)

*This page, published in 2018, summarizes findings of a study of corrections workers conducted by researchers from the University of Washington and University of Alabama at Birmingham. Their findings were based on responses to an anonymous questionnaire completed by 355 employee volunteers from a dozen Washington correctional facilities.*

- [Veterans' Administration - National Center for PTSD](#)

*The National Center for PTSD, part of the U.S. Department of Veterans Affairs, provides research and education on PTSD, and information for those who have and are affected by PTSD.*

- [BC First Responders Mental Health - Best Practices](#)

*Recommendations and strategies developed by a group of British Columbia first responders and Work-Safe BC, the provincial agency that provides a no-fault insurance system for the workplace.*

## Dealing with a Presumption Bill in Your State? These Provisions May Help

When a PTSD presumption bill is filed in a state's legislature, some pools become engaged in the advocacy process. Pennsylvania, where [HB 432](#) is pending, is one of those states, and the [Delaware Valley Trusts](#) is one of those pools. DVT General Counsel Geoff Beauchamp suggests a few legal provisions to consider:

- Limit the occupational disease or compensable injury to PTSD and not other unspecified mental conditions. A PTSD diagnosis already includes a variety of mental conditions such as depression, mood disorders, suicidal thoughts, a persistent negative emotional state, etc.
- Because any PTSD presumption law will dispense with the requirement of an "objective abnormal working condition" it is important that the law require the claimant's PTSD be caused by direct exposure to a traumatic event. This requirement serves two purposes:
  - Provides an objective evidentiary basis for assessing the PTSD diagnosis and therefore the credibility of the claim itself.
  - Tying the PTSD diagnosis to a "traumatic event" will allow a factfinder to identify the responsible employer. For example, if a police officer works 20 years for one police department and then moves to another where the officer is diagnosed with PTSD, it is important to determine where the triggering traumatic event occurred.
- The PTSD diagnosis must be made by a licensed psychiatrist or psychologist. Clinical expertise of the diagnostician is essential in assessing validity of the PTSD diagnosis.
- Require police incident reports or other documentation of the triggering traumatic event as a pre-condition for submitting any PTSD claim.
- Specify that the PTSD diagnosis be made in accordance with [DSM-5](#) to ensure it is made based on generally accepted scientific standards. DSM-5 plainly states that the hallmark of a PTSD diagnosis is the victim's exposure to a triggering traumatic event.
- If the PTSD legislation actually creates a "presumption," the rebuttal standard should be clearly stated and preferably should be the same as the claimant's burden of proof. The quality of the evidence presented by both parties should be "substantial competent evidence," so that incompetent or speculative medical testimony will be excluded from consideration.
- Given the long latency period from the claimant's exposure to the triggering event and their PTSD diagnosis, it is important to begin the limitations period from the claimant's exposure to the last traumatic event.
- Impose a minimum service requirement for eligibility such that a first responder must have been employed for five years, for example, before submitting a PTSD claim.
- Require pre-employment psychological screening of otherwise eligible employees so that pre-existing mental disorders can be identified.
- Require public employers to provide educational training related to mental health awareness, prevention, mitigation and treatment.

For more information, contact [Geoff Beauchamp](#).



## About the Author



Lynn McNamara had a front-row seat this spring as PTSD legislation was considered in Oregon, both as executive director of CIS and as a member of the state's Management-Labor Advisory Committee that opines on proposed changes to the workers' compensation system.

After a 44-year career that included journalism, municipal government, state municipal league service and pooling, she retired from CIS in March 2019. Lynn currently is a Project Partner with AGRiP QEI patron Tandem Collective, which provides consulting services to public entity risk pools, and the owner of a communications and consulting firm, Manuscription.

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