



Town of East Greenwich
Town Manager

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Testimony from Andrew E. Nota, East Greenwich Town Manager in **Opposition** to
H 7464– RELATING TO TOWNS AND CITIES -- RELIEF OF INJURED AND DECEASED
FIRE FIGHTERS AND POLICE OFFICERS
House Committee on Municipal Government & Housing – April 2, 2024

Dear Chairman Casey and Honorable Members of the House Municipal Government and Housing Committee:

I am writing in **Opposition** to this legislation, as written, to express concerns regarding House Bill 7464 and its proposed presumption for Post-Traumatic Stress Injury (PTSI) among public safety employees within the Injured-on Duty (IOD) system.

The IOD system demands modernization, particularly for city and town public safety officials who were excluded from the significant improvements made for state public safety officials in 2019. While we acknowledge the importance of addressing the health concerns of our public safety personnel in this particular area, it is imperative that any legislative action is grounded in a thorough understanding of the existing medical and fiscal challenges and supported by sound medical science and best practices.

I remain generally supportive of the definitional changes recommended in this legislation although as presented, this language comes with limitations that are too restricted in its present form. I strongly recommend that you require certain elements to accommodate a more equitable approach in implementing such a benefit expansion at this moment in time, based on the present fiscal status of the Pension System.

The addition of the proposed language in **(Blue)** to the IOD Statute, **(2) Post-traumatic stress disorder** (as described in the Diagnostic and Statistical Manual of Mental Disorders, current edition, published by the American Psychiatric Association) related to the exposure of potentially traumatic events, resulting from a police officer or firefighter acting within the course of their employment or from the rendering of emergency assistance in the state of Rhode Island, at any occurrence involving the protection or the rescue of human life while off[1]duty, as set forth in subsection (h) of this section, and diagnosed with a post-traumatic stress injury by a licensed mental health professional, with a master's degree or higher, **after having been involved in a qualifying event, shall be deemed to be eligible** and have sustained an injury in the line of duty, as that term is used in subsection (a)(1) of this section.

The above section **(as proposed in blue)** can be enhanced by simply adding the language in **(Red)** associated with a qualifying event, as this focus will be needed in deciding such case eligibility for future employee applicants. The more successful and balanced programs in other States provide for enhanced definitions that establish system safety protocols, protecting those employees who have been legitimately injured, and setting aside other cases, that lack the requisite criteria to gain eligibility for disability pension benefits. The below recommendations are made in an attempt to provide and support this new expanded benefit, while also establishing a framework for the program that will allow for it to remain sustainable and limit any negative fiscal impacts, such a ballooning unfunded liability, or a furthering of the present negative

cash position of the Pension System. Such movement could negate the progress already made in specific funded ratios over past 10 years, and further weaken the changes of implementing to COLA benefits or other benefits for retirees and the present active work force.

As used in this Section (recommended):

- A) An **“Eligible individual”** means a police officer, firefighter or emergency medical services personnel.
- B) In the **“Line of Duty”** or in the **“Course of their Employment”** means that an eligible individual is obligated or authorized by law, rule, regulation or written condition of employment service to perform, or for which the eligible individual is compensated by the public entity such individual services.
- C) **“Post -traumatic Stress Injury”** means an injury that meets the diagnostic criteria for post-traumatic stress disorder as specified in the most recent edition of the American Psychiatric Associations **“Diagnostic and Statistical Manual of Mental Disorders.”**
- D) **“Qualifying Event”** means an event occurring in the line of duty on or July 1, 2024 in which a police officer, firefighter, or emergency medical services personnel,
 - i. Views a decease minor;
 - ii. Witnesses the death of a person or an incident involving the death of a person;
 - iii. Witnesses an injury to a person who subsequently dies before or upon admission at a hospital or other medical facility as a result of an injury and not as a result of an intervening cause;
 - iv. Has a physical contact with and treats an injured person who subsequently does before or upon admission at a hospital or other medical facility as a result of the injury and not as a result of any other intervening cause;
 - v. Carries an injured person who subsequently dies before or upon admission at a hospital or other medical facility as a result of the injury and not as a result of any other intervening cause; or
 - vi. Witnesses a traumatic physical injury that results in a loss of a vital body part or a vital body function that results in permanent disfigurement of the victim.

“Standard”: In the event that the diagnosis of a post-traumatic stress injury has an additional basis that does not rise solely from a police officer or firefighter acting within the course of their employment or from the rendering of emergency assistance in the state of Rhode Island, any conclusion that the injury was sustained in the line of duty may be rebutted by a **“Preponderance of the Evidence”**. The Burden of

Proof Standard placed on the employer in determining the eligibility of public safety personnel officers for in-the-line-of-duty disability benefits due to PTSD at the **“Clear and Convincing Standard”** is an unreachable bar. Should this be the new acceptable standard, then a balance needs to be struck with a very specific listing of **“Qualifying Events”** and/or very specific **Treatment Program Requirements”** should be established, before an applicant is awarded a disability pension.

Any standard allows for some level of review and is not conclusive in its findings, although the “Clear and Convincing” standard is weighted so heavily to one side that when this burden is placed on the employer or the employee, it remains unreachable. The more reasonable standard is that of a “Preponderance of the Evidence” or (more likely than not) that would allow for a thorough review of the individuals record, in working to achieve the best and most equitable results for the Employee Applicant, the Pension System and for all impacted Cities and Towns.

It is also important to clearly provide for and explain those situations when an employee applicant does not qualify for a benefit.

The benefits provided for under this section shall not be extended to a police officer or firefighter, in the following situations:

- 1) If their post-traumatic stress injury diagnosis arises out of any disciplinary action, work evaluation, job transfer, layoff, demotion, termination, or similar adverse job action; or
- 2) For police or fire fighters hired after July 1, 2024 who have not, prior to joining the department, engaged in a mental health evaluation at the hiring entity’s expense.

(f) Any police officer or firefighter as defined in §§ 45-19-1(b) and (c) who is unable to perform his or her duties by reason of post-traumatic stress injury as set forth in § 45-19-1(a)(2) is entitled to receive an accidental disability retirement allowance and he or she is entitled to all of the benefits provided for in this chapter, chapters 19, 19.1 and 21 of this title, and chapter 10 of 8 title 36 if the firefighter is employed by the state.

** The above language (f) is far too general and ambiguous and needs to be modified in adding any and all necessary system protections.

Consider added language- “focusing on the idea of treatment”

“If a licensed mental health care professional determines that a police officer or firefighter who has been diagnosed with a post-traumatic stress injury can continue to perform his or her duties with reasonable accommodations, such accommodations shall be afforded by the employer including, but not limited to, allowing the police officer or firefighter to attend sessions with his or her treating mental health care professional while on duty in an amount of time not to exceed ten percent (10%) of the scheduled shift hours. Such hours shall be deemed paid administrative leave but, notwithstanding any agreement or regulation to the contrary, the employer shall not be required to bring in additional employees to cover the leave.”

Should Treatment efforts fail:

If a licensed mental health care professional determines that a police officer or firefighter as defined in §§ 45-19-1(b) and (c) is unable to perform his or her duties by reason of post-traumatic stress injury as set forth in § 45-19-1(a)(2), that police officer or firefighter shall, within thirty (30) days of that determination apply for an accidental disability retirement allowance, and, upon the appropriate review and decision of the ERSRI, if the application is approved, he or she is entitled to all of the benefits provided for in this chapter, chapters 19, 19.1 and 21 of this title, and chapter 10 of title 36 if the firefighter is employed by the state.

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We urge the General Assembly to prioritize reforms such as establishing a State Presumption Fund to cover presumption-related claims and extending IOD reforms to municipal public safety personnel to address indefinite IOD statuses. Such Funds have been implemented elsewhere with some success, with select funds also focusing on the important element of treatment, to encourage the rehabilitation of employees. The fund provides for reimbursement to public employers for the cost of treatment with continued pay and benefits for employees during treatment. This noble idea involves working in partnership to equip an employee to potentially reenter the workforce, rather than accelerating their departure by issuing them a disability pension. This should be the overriding goal of any such program, while also caring for those that are unable to return to work and in those cases, qualifying them for a disability pension, based on the appropriate pension system criteria established.

Rhode Island municipalities can be open to the future expansion of certain benefits provided these important concerns are adequately addressed, involving an element of treatment for employees, the existence of a qualifying event and the overall stability and sustainability of the pension system. While we fully endorse providing much-needed support to public safety officials, it is essential that any such support aligns with medical science and best practices that is observed nationally on this issue and sufficient protections are put into place to protect the Pension System or to provide for the direct state funding of any benefit expansion that is legislatively approved.

Sincerely,

A handwritten signature in black ink, appearing to read "Andrew E. Nota", with a long horizontal flourish extending to the right.

Andrew E. Nota, Town Manager

Town of East Greenwich

V.P. RI League of Cities and Towns

Board Chairman, Rhode Island Interlocal Risk Management Trust