

Second Regular Session of the 121st General Assembly (2020)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2019 Regular Session of the General Assembly.

## SENATE ENROLLED ACT No. 25

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AN ACT to amend the Indiana Code concerning pensions.

*Be it enacted by the General Assembly of the State of Indiana:*

SECTION 1. IC 36-8-8-12.5, AS AMENDED BY P.L.59-2009, SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2020]: Sec. 12.5. (a) This section applies only to a fund member who:

- (1) is hired for the first time after December 31, 1989;
- (2) chooses coverage by this section and section 13.5 of this chapter under section 12.4 of this chapter; or
- (3) is described in section 12.3(c)(2) of this chapter.

(b) At the same hearing where the determination of whether the fund member has a covered impairment is made, the local board shall determine the following:

- (1) Whether the fund member has a Class 1 impairment. A Class 1 impairment is a covered impairment that is the direct result of one (1) or more of the following:
  - (A) A personal injury that occurs while the fund member is on duty.
  - (B) A personal injury that occurs while the fund member is off duty and is responding to:
    - (i) an offense or a reported offense, in the case of a police officer; or
    - (ii) an emergency or reported emergency for which the fund member is trained, in the case of a firefighter.

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(C) An occupational disease (as defined in IC 22-3-7-10). A covered impairment that is included within this clause and subdivision (2), **including mental illnesses**, shall be considered a Class 1 impairment.

(D) A health condition caused by an exposure risk disease that results in a presumption of disability or death incurred in the line of duty under IC 5-10-13.

(2) Whether the fund member has a Class 2 impairment. A Class 2 impairment is a covered impairment that is:

(A) a duty related disease. A duty related disease means a disease arising out of the fund member's employment. A disease shall be considered to arise out of the fund member's employment if it is apparent to the rational mind, upon consideration of all of the circumstances, that:

(i) there is a connection between the conditions under which the fund member's duties are performed and the disease;

(ii) the disease can be seen to have followed as a natural incident of the fund member's duties as a result of the exposure occasioned by the nature of the fund member's duties; and

(iii) the disease can be traced to the fund member's employment as the proximate cause; or

(B) a health condition caused by:

(i) an exposure related heart or lung disease;

(ii) an exposure related cancer; or

(iii) exposure related Parkinson's disease;

that results in a presumption of disability incurred in the line of duty under IC 5-10-15.

(3) Whether the fund member has a Class 3 impairment. A Class 3 impairment is a covered impairment that is not a Class 1 impairment or a Class 2 impairment.

SECTION 2. IC 36-8-8-13.1, AS AMENDED BY P.L.179-2018, SECTION 12, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2020]: Sec. 13.1. (a) If:

(1) the local board has determined under this chapter that a covered impairment exists and the safety board has determined that there is no suitable and available work within the department, considering reasonable accommodation to the extent required by the Americans with Disabilities Act; or

(2) the fund member has filed an appeal under section 12.7(o) of this chapter;

the local board shall submit the local board's determinations and the

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safety board's determinations to the system board's director.

(b) Whenever a fund member is determined to have an impairment under section 12.7(i) of this chapter, the system board's director shall initiate a review of the default award not later than sixty (60) days after the director learns of the default award.

(c) After the system board's director receives the determinations under subsection (a) or initiates a review under subsection (b), the fund member must submit to an examination by a medical authority selected by the system board. The authority shall determine if there is a covered impairment. With respect to a fund member who is covered by sections 12.5 and 13.5 of this chapter, the authority shall determine the degree of impairment. The system board shall adopt rules to establish impairment standards, such as the impairment standards contained in the United States Department of Veterans Affairs Schedule for Rating Disabilities. The report of the examination shall be submitted to the system board's director. If a fund member refuses to submit to an examination, the authority may find that no impairment exists.

(d) The system board's director shall review the medical authority's report and the local board's determinations and issue an initial determination within sixty (60) days after receipt of the local board's determinations. The system board's director shall notify the local board, the safety board, and the fund member of the initial determination. The following provisions apply if the system board's director does not issue an initial determination within sixty (60) days and if the delay is not attributable to the fund member or the safety board:

- (1) In the case of a review initiated under subsection (a)(1):
  - (A) the determinations of the local board and the chief of the police or fire department are considered to be the initial determination; and
  - (B) for purposes of section 13.5(d) of this chapter, the fund member is considered to be totally impaired.
- (2) In the case of an appeal submitted under subsection (a)(2), the statements made by the fund member under section 12.7(o) of this chapter are considered to be the initial determination.
- (3) In the case of a review initiated under subsection (b), the initial determination is the impairment determined under section 12.7(i) of this chapter.

(e) The fund member, the safety board, or the local board may object in writing to the director's initial determination within fifteen (15) days after the determination is issued. If no written objection is filed, the initial determination becomes the final order of the system board. If a timely written objection is filed, the system board shall issue



the final order after a hearing. Unless an administrative law judge orders a waiver or an extension of the period for cause shown, the final order shall be issued not later than one hundred eighty (180) days after the date of receipt of the local board's determination or the date the system board's director initiates a review under subsection (b). The following provisions apply if a final order is not issued within the time limit described in this subsection and if the delay is not attributable to the fund member or the chief of the police or fire department:

- (1) In the case of a review initiated under subsection (a)(1):
  - (A) the determinations of the local board and the chief of the police or fire department are considered to be the final order; and
  - (B) for purposes of section 13.5(f) of this chapter, the fund member is considered to be totally impaired.
- (2) In the case of an appeal submitted under subsection (a)(2), the statements made by the fund member under section 12.7(o) of this chapter are considered to be the final order.
- (3) In the case of a review initiated under subsection (b), the impairment determined under section 12.7(i) of this chapter is considered to be the final order.

(f) If the system board approves the director's initial determination, then the system board shall issue a final order adopting the initial determination. The local board and the chief of the police or fire department shall comply with the initial determination. If the system board does not approve the initial determination, the system board may receive additional evidence on the matter before issuing a final order.

(g) Appeals of the system board's final order may be made under IC 4-21.5.

(h) The transcripts, records, reports, and other materials compiled under this section must be retained in accordance with the procedures specified in section 12.7(p) of this chapter.

**(i) The system board may seek the assistance of the mental health disability review panel established under IC 36-8-8.3-4 in issuing an initial determination or a final order.**

SECTION 3. IC 36-8-8.3 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2020]:

**Chapter 8.3. Impairment Determination for Mental Illness**

**Sec. 1. This chapter applies to a 1977 fund member who receives a final determination of an impairment for a mental health illness under IC 36-8-8-13.1 after December 31, 2012.**

**Sec. 2. As used in this chapter, "review panel" refers to a mental**



health disability review panel established under section 4 of this chapter.

**Sec. 3.** As used in this chapter, "system board" refers to the board of trustees of the Indiana public retirement system established by IC 5-10.5-3-1.

**Sec. 4. (a)** This chapter provides for the establishment of mental health disability review panels to review impairment determinations in the case of a mental health disability.

**(b)** A mental health disability review panel consists of:

- (1)** one (1) psychologist licensed under IC 25-33-1-5.1;
- (2)** one (1) psychiatrist licensed as a physician under IC 25-22.5; and
- (3)** one (1) active or retired police officer or firefighter who is a member of the 1977 fund, depending on the profession of the fund member being evaluated.

**(c)** A mental health disability review panel shall be selected by the system board.

**(d)** Compensation shall be determined by the system board.

**(e)** A mental health disability review panel established under this chapter is not a governing body under IC 5-14-1.5-2(b).

**Sec. 5. (a)** The final determination of an impairment for a mental illness is provisional for two (2) years:

- (1)** for a final determination made after June 30, 2020, from the date of the final determination by the system board under IC 36-8-8-13.1; or
- (2)** for a final determination made after December 31, 2012, and before July 1, 2020, beginning July 1, 2020.

**(b)** During the initial two (2) year provisional period, the fund member shall be subject to and responsible for active participation in a mental health treatment plan as determined by the fund member's treating physician.

**(c)** The employer shall pay for the fund member's mental health care and treatment relating to the disability during the initial two (2) year provisional period.

**Sec. 6. (a)** At the conclusion of the initial two (2) year provisional period described in section 5 of this chapter, a mental health disability review panel, as described in section 4 of this chapter, shall conduct a confidential evaluation of the fund member.

**(b)** The review panel:

- (1)** shall examine reports and records submitted by the fund member's treating physician, and any other mental health



care provider seen by the fund member; and  
 (2) may consult with other medical authorities;  
 in conducting its confidential evaluation.

Sec. 7. (a) If the review panel determines the fund member is no longer impaired, the review panel shall notify the system board and the local board, and the fund member shall be returned to duty.

(b) If the review panel determines the fund member remains impaired consistent with the final disability determination, the fund member shall begin an additional two (2) year provisional period from the date of the review panel's determination. The fund member shall continue to be subject to and responsible for active participation in a mental health treatment plan as determined by the fund member's treating physician.

(c) The employer shall continue to pay for the fund member's mental health care and treatment relating to the disability during the second two (2) year provisional period.

Sec. 8. At the conclusion of the fund member's second two (2) year provisional period, the review panel shall reevaluate the fund member. The review panel shall conduct its confidential reevaluation in the manner described in section 6(b) of this chapter.

Sec. 9. (a) If, after the second evaluation, the review panel determines the fund member is no longer impaired, the review panel shall notify the system board and the local board, and the fund member shall be returned to duty.

(b) If the review panel determines the fund member remains impaired consistent with the final disability determination, the fund member shall be determined to have a permanent impairment.

Sec. 10. The system board may, during the provisional periods described in sections 5 and 7 of this chapter, suspend a member's disability benefit if the member fails to comply with reasonable requests by the review panel for information pursuant to its authority under this chapter.



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President of the Senate

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President Pro Tempore

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Speaker of the House of Representatives

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Governor of the State of Indiana

Date: \_\_\_\_\_ Time: \_\_\_\_\_

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