

# STATE OF NEW YORK

1310--C

2023-2024 Regular Sessions

## IN ASSEMBLY

January 17, 2023

Introduced by M. of A. SILLITTI, BERGER, STECK, THIELE, BRAUNSTEIN, LUCAS, DeSTEFANO, J. A. GIGLIO, ANGELINO, JEAN-PIERRE, GUNTHER, PHEFFER AMATO, BUTTENSCHON -- read once and referred to the Committee on Judiciary -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- recommitted to the Committee on Judiciary in accordance with Assembly Rule 3, sec. 2 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- recommitted to the Committee on Judiciary in accordance with Assembly Rule 3, sec. 2 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the civil practice law and rules, in relation to providing a testimonial privilege for communications arising out of law enforcement peer support counseling

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Short title. This act shall be known and may be cited as  
2 the "Lieutenant Joseph Banish mental health act".

3 § 2. The civil practice law and rules is amended by adding a new  
4 section 4508-a to read as follows:

5 § 4508-a. Law enforcement peer support specialist. (a) Definitions. As  
6 used in this section the following terms shall have the following mean-  
7 ings:

8 1. "Law enforcement agency" means any department, division, agency,  
9 board, commission, or public authority of the state or any subdivision  
10 thereof that employs police officers.

11 2. "Police officer" means a police officer as defined in section 1.20  
12 of the criminal procedure law.

13 3. "Peer support communication" includes:

14 (i) an oral or written communication made in the course of a peer  
15 support counseling session;

EXPLANATION--Matter in italics (underscored) is new; matter in brackets  
[-] is old law to be omitted.

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1 (ii) a note or report arising out of a peer support counseling  
2 session;

3 (iii) a record of a peer support counseling session; or

4 (iv) with respect to a communication made by a peer support partic-  
5 ipant in the course of a peer support counseling session, another commu-  
6 nication, regarding the first communication, that is made between a peer  
7 support specialist and:

8 (A) another peer support specialist;

9 (B) a staff member of a peer support counseling program; or

10 (C) a supervisor of the peer support specialist.

11 4. "Peer support counseling program" means a program provided by a law  
12 enforcement agency that provides counseling services from a peer support  
13 specialist to a police officer of the law enforcement agency.

14 5. "Peer support counseling session" means any counseling formally  
15 provided through a peer support counseling program between a peer  
16 support specialist and one or more police officers.

17 6. "Peer support participant" means a police officer who receives  
18 counseling services from a peer support specialist.

19 7. "Peer support specialist" means a police officer who:

20 (i) has received training in:

21 (A) peer support counseling; and

22 (B) providing emotional and moral support to police officers who have  
23 been involved in or exposed to an emotionally traumatic experience in  
24 the course of employment; and

25 (ii) is designated by a law enforcement agency to provide the services  
26 described in subparagraph (i) of this paragraph.

27 (b) Confidential information privileged. Except as provided in subdi-  
28 vision (c) of this section, a peer support specialist or peer support  
29 participant shall not disclose the contents of a peer support communi-  
30 cation to an individual who was not a party to such peer support commu-  
31 nication.

32 (c) Exceptions; peer support communication. Subdivision (b) of this  
33 section shall not apply to a peer support communication if:

34 1. the peer support communication contains:

35 (i) an explicit threat of suicide by an individual in which the indi-  
36 vidual:

37 (A) shares:

38 (I) an intent to die by suicide; and

39 (II) a plan for a suicide attempt or the means by which the individual  
40 plans to carry out a suicide attempt; and

41 (B) does not solely share that the individual is experiencing suicidal  
42 thoughts;

43 (ii) an explicit threat by an individual of imminent and serious phys-  
44 ical bodily harm or death to another individual;

45 (iii) information:

46 (A) relating to the abuse or neglect of:

47 (I) a child; or

48 (II) an older or vulnerable individual; or

49 (B) that is required by law to be reported; or

50 (iv) an admission of criminal conduct;

51 2. the disclosure is permitted by each peer support participant who  
52 was a party to, as applicable:

53 (i) the peer support communication;

54 (ii) the peer support counseling session out of which the peer support  
55 communication arose;

1 (iii) the peer support counseling session of which the peer support  
2 communication is a record; and

3 (iv) the communication made in the course of a peer support counseling  
4 session that the peer support communication is regarding;

5 3. a court of competent jurisdiction issues an order or subpoena  
6 requiring the disclosure of the peer support communication; or

7 4. the peer support communication contains information that is  
8 required by law to be disclosed.

9 (d) Exceptions; other. Subdivision (b) of this section shall not  
10 prohibit the disclosure of:

11 1. an observation made by a police officer of a peer support partic-  
12 ipant outside of a peer support counseling session; or

13 2. knowledge of a police officer about a peer support participant not  
14 gained from a peer support communication.

15 (e) Disclosures. Before the initial peer support counseling session of  
16 a peer support participant, a peer support specialist shall inform the  
17 peer support participant in writing of the confidentiality requirement  
18 under subdivision (b) of this section and the exceptions to that  
19 requirement under subdivisions (c) and (d) of this section.

20 (f) Rules and regulations. The division of criminal justice services  
21 shall promulgate rules and regulations necessary to effectuate this  
22 section and shall be empowered to identify minimum certifications  
23 required of trained members, approved training courses, record keeping  
24 requirements, and retraining requirements.

25 § 3. This act shall take effect on the one hundred eightieth day after  
26 it shall have become a law. Effective immediately, the addition, amend-  
27 ment and/or repeal of any rule or regulation necessary for the implemen-  
28 tation of this act on its effective date are authorized to be made and  
29 completed on or before such effective date.