# STATE OF NEW YORK

6709--B

2023-2024 Regular Sessions

# IN SENATE

May 5, 2023

Introduced by Sens. SKOUFIS, GALLIVAN, GOUNARDES, MARTINS, MAYER, RAMOS, ROLISON -- read twice and ordered printed, and when printed to be committed to the Committee on Judiciary -- recommitted to the Committee on Judiciary in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- 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:**

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

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

**§ 4508-a. Law enforcement peer support specialist. (a) Definitions. As used in this section the following terms shall have the following meanings:**

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

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

**3. "Peer support communication" includes:**

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

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

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

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

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(iv) with respect to a communication made by a peer support participant in the course of a peer support counseling session, another communication, regarding the first communication, that is made between a peer support specialist and:

(A) another peer support specialist;

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

(C) a supervisor of the peer support specialist.

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

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

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

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

(i) has received training in:

(A) peer support counseling; and

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

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

(b) Confidential information privileged. Except as provided in subdivision (c) of this section, a peer support specialist or peer support participant shall not disclose the contents of a peer support communication to an individual who was not a party to such peer support communication.

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

1. the peer support communication contains:

(i) an explicit threat of suicide by an individual in which the individual:

(A) shares:

(I) an intent to die by suicide; and

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

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

(ii) an explicit threat by an individual of imminent and serious physical bodily harm or death to another individual;

(iii) information:

(A) relating to the abuse or neglect of:

(I) a child; or

(II) an older or vulnerable individual; or

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

(iv) an admission of criminal conduct;

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

(i) the peer support communication;

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

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

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

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

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

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

1. an observation made by a police officer of a peer support participant outside of a peer support counseling session; or

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

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

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

§ 3. This act shall take effect on the one hundred eightieth day after it shall have become a law. Effective immediately, the addition, amendment and/or repeal of any rule or regulation necessary for the implementation of this act on its effective date are authorized to be made and completed on or before such effective date.