
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Nancy Skinner, Chair
2019 - 2020 Regular

Bill No: AB 1117 **Hearing Date:** June 25, 2019
Author: Grayson
Version: April 24, 2019
Urgency: No **Fiscal:** Yes
Consultant: GC

Subject: *Peace Officers: Peer Support*

HISTORY

Source: Fraternal Order of Police

Prior Legislation: AB 1116 (Grayson), 2018, vetoed

Support: California Brady United Against Gun Violence; Kaiser Permanente

Opposition: None known

Assembly Floor Vote: 78 - 0

PURPOSE

The purpose of this bill is to implement a Peace Officer Peer Support and Crisis Referral Services Pilot program.

Existing law provides that a person has no duty to come to the aid of another, but if he or she decides to assist another then he or she must act with reasonable care. (*Artiglio v. Corning Inc.* (1998) 18 Cal.4th 604; *Williams v. State of California* (1983) 34 Cal.3d 18.)

Existing law provides that medical, law enforcement, and emergency personnel who, in good faith and not for compensation, render emergency medical or nonmedical care at the scene of an emergency, shall not be liable for any civil damages resulting from any act or omission. (Health & Safety Code Section 1799.102 (a).)

Existing law provides that person who in good faith, and not for compensation, renders emergency medical or nonmedical care or assistance at the scene of an emergency, as specified, shall not be liable for civil damages resulting from any act or omission, other than an act or omission constituting gross negligence or willful or wanton misconduct. (Health & Safety Code Section 1799.102 (b).)

Existing law provides that no physician or nurse, who in good faith gives emergency instructions to an EMT-II or mobile intensive care paramedic at the scene of an emergency, shall be liable for any civil damages as a result of issuing the instructions. Existing law also provides that no EMT-II or mobile intensive care paramedic rendering care within the scope of his or her duties who, in good faith and in a non-negligent manner, follows the instructions of a physician or nurse shall

be liable for any civil damages as a result of following such instructions. (Health & Safety Code Section 1799.104.)

Existing law provides that a firefighter, police officer, or other law enforcement officer, EMT-I, EMT-II, or EMT-P who renders emergency medical services at the scene of an emergency shall only be liable for civil damages for acts or omissions performed in a grossly negligent manner or acts or omissions not performed in good faith. (Health & Safety Code Section 1799.106.)

This bill defines a “peer support team” as a team composed of emergency service personnel, as defined, hospital staff, clergy, and educators who have been appointed to the team by a Peer Support Labor-Management Committee, as defined, and who have completed a peer support training course, as specified.

This bill provides that a communication made by emergency service personnel or a peer support team member while the peer support team member provides peer support services, as defined, is confidential and would prohibit disclosure of such a communication in a civil, administrative, or arbitration proceeding, except under limited circumstances, including, among others, when disclosure is reasonably believed to be necessary to prevent death, substantial bodily harm, or commission of a crime, or when disclosure is reasonably believed to be required pursuant to the peer support policy, as specified.

This bill provides that, except for an action for medical malpractice, a peer support team member providing peer support services as a member of a peer support team is not liable for damages, as specified, relating to an act, error, or omission in performing peer support services, unless the act, error, or omission constitutes gross negligence or intentional misconduct.

This bill provides that a communication made by emergency service personnel to a crisis hotline or crisis referral service, as defined, is confidential and shall not be disclosed in a civil, administrative, or arbitration proceeding, except as specified.

This bill remains in effect until January 1, 2025.

This bill extends the confidentiality provisions beyond the sunset date of January 1, 2025 as specified.

COMMENTS

1. Need for This Bill

According to the author:

The psychological and emotional stress that first responders experience can manifest in post-traumatic stress, substance abuse, and, tragically, suicide. While support services may be available in some cases, first responders are often reluctant to utilize them for reasons including fear of adverse job impacts, the stigma surrounding mental health issues, and the perception among emergency personnel that they must show no signs of weakness.

In a 2016 behavioral health study, roughly three-fourths of the surveyed officers reported having experienced a traumatic event, but less than half of them reported

it to their agency. Even more troubling, about half of the officers reported personally knowing another law enforcement officer who changed after experiencing a traumatic event, and about half reported knowing an officer who had committed suicide.¹

2. Confidentiality and Immunity Provisions

In order to encourage openness in peer counseling, the bill provides that communications between peace officers and peer support team members, as well as between peace officers and crisis hotline and referral services, are confidential and shall not be disclosed in a civil, administrative, or arbitration proceeding, subject to certain exceptions. This bill provides that peer support team members are not liable for damages caused by their acts or omissions when performing peer support services, unless the act or omission constitutes gross negligence or intentional misconduct. These confidentiality and immunity provisions would only apply to peer support team members who are also emergency service personnel and who have taken the required training.

3. Confidential vs. Privileged Communications

This bill would also make any communication between the peer support team and the peace officer receiving the peer support services a "confidential" communication and would prohibit the disclosure of such communications in a civil, administrative, or arbitration proceeding. The author and supporters stress that maintaining confidentiality is especially important in this context, because peace officers, like other emergency service personnel, sometimes fail to seek help because they fear job repercussions. This provision of the bill parallels, but also significantly differs from, existing laws on confidentiality and privilege. Although the "duty of confidentiality" and evidentiary rules on "privileged communications" sometimes overlap and have the common aim of encouraging openness in certain settings, they are nonetheless distinct. The duty of confidentiality refers to the legal duty of some professionals (e.g., doctor, lawyer, or psychotherapist) not to disclose information obtained in confidence from their client. Subject to certain exceptions, a professional who discloses such information may be liable to the client for breach of the duty of confidentiality. A "privileged communication" also protects communications between certain professionals and their clients (as well as between spouses and between clergy and penitent). However, a privileged communication is not a duty but a *rule of evidence*, preventing the forced disclosure of the communication as evidence in a court case, and allowing the holder of the privilege to prevent another from disclosing the communication.

However, the "privilege" created by this bill is much more limited. AB 1117 will only prevent disclosure of the communication in a civil, administrative, or arbitration proceeding. Most significant, AB 1117 would not prevent disclosure of the communication as evidence in a *criminal* trial or proceeding.

4. Veto of AB 1116 (Grayson) from 2018

In the last legislative session, the author carried AB 1116, which would have established a peer support program for all first responders, including both firefighters and peace officers. That bill effectively combined the provisions of this year's AB 1116 and AB 1117. Although the 2018

¹ Fleischmann, M. H., Strode, P., Broussard, B., & Compton, M. T. (2016). Law enforcement officers' perceptions of and responses to traumatic events: A survey of officers completing Crisis Intervention Team training. *Policing and Society*. <https://doi.org/10.1080/10439463.2016.1234469>

version of AB 1116 did not receive any negative floor or committee votes, Governor Brown vetoed the legislation because of the confidentiality provisions. According to Governor Brown's veto message, "the scope of confidentiality afforded under this bill is too broad and fails to strike the right balance between fostering collegial trust and concealing information necessary to ensure safe and healthy workplaces." In addition, Governor Brown thought the bill unnecessary because, he believed, state and local agencies were free to develop peer support programs without statutory authorization.

5. Extension of Confidentiality Beyond the Pilot Program

Because the pilot program will expire on January 1, 2025, this bill contains a provision (Article 22) that will become operative when the pilot projects ends. Article 22 simply clarifies that communications made pursuant to the peer support program between January 1, 2020, and January 1, 2025, will remain confidential and barred from disclosure in civil, administrative, or arbitration proceedings after the project ends.

6. Argument in Support

According to the Fraternal Order of Police:

The pilot program under AB 1117 will create an important first step for most departments in the State of California - a peer support team composed of emergency service personnel, including hospital staff, clergy, and educators. The bill would provide that communications made between emergency service personnel and a peer support team member while providing support services will remain confidential under certain circumstances. This confidential communication is imperative for law enforcement agencies that have support teams in place, particularly with an agency's crisis hotline or therapist.

Our officers are called to handle traumatic scenes on a regular basis throughout the course of their careers. This trauma and stress can sometimes lead to physical and emotional illness, failure of usual coping mechanisms, loss of interest in the job or normal life activities, personality changes, loss of ability to function, and physiological disruption in their personal life. Often, these issues are left unresolved because there is no place for an officer to go to seek help without fear of losing his or her job. Because of this it is imperative that our agency's crisis response teams, strengthened under this pilot program, are able to maintain confidentiality with officers dealing with critical incident stress related to their job duties.

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