

SENATE JUDICIARY COMMITTEE
Senator Thomas Umberg, Chair
2023-2024 Regular Session

AB 2859 (Jim Patterson)
Version: June 24, 2024
Hearing Date: June 25, 2024
Fiscal: Yes
Urgency: No
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SUBJECT

Emergency medical technicians: peer support

DIGEST

This bill authorizes emergency medical services (EMS) providers to establish a peer support and crisis referral program for providing a network of peer representatives, who are available to come to the aid of their fellow employees on a broad range of emotional or professional issues. It provides that communications between EMS personnel and a peer support team member, or a crisis hotline or crisis referral service, are confidential, as provided. This bill immunizes a peer support team member from specified liability arising from the provision of peer support services.

EXECUTIVE SUMMARY

First responders are faced with extremely stressful situations on a regular basis and can be exposed to traumatic events as part of their regular course of business. This can lead those responding to emergencies with a host of issues, including behavioral health issues, substance abuse problems, and post-traumatic stress disorder (PTSD).

One method to address these consequences that has been growing in favor is the establishment of peer support and crisis referral services. Peer support teams allow those faced with these traumatic events to turn to colleagues, who are trained in handling such issues and communicating with those affected, to talk to and get help.

Such peer support and crisis referral programs have been established in the law for firefighters and law enforcement officers. To ensure a level of trust and openness within these programs, information disclosed within these programs is provided confidentially and disclosure restrictions, with some exceptions. Peer support team members are also provided qualified immunity from civil damages to incentivize them to provide these critical services. This bill creates such a program for EMS personnel.

No timely support or opposition was received. This bill passed out of the Senate Health Committee on a vote of 11 to 0.

PROPOSED CHANGES TO THE LAW

Existing law:

- 1) Establishes the California Firefighter Peer Support and Crisis Referral Services Act, which authorizes the state or any local or regional public fire agency to establish a Peer Support and Crisis Referral Program. (Gov. Code § 8669.05 et seq.)
- 2) Establishes the Law Enforcement Peer Support and Crisis Referral Services Program, which authorizes a local or regional law enforcement agency to establish a peer support and crisis referral program. (Gov. Code § 8669.1 et seq.)
- 3) Provides that, generally, no person has a privilege to refuse to be a witness, or refuse to disclose any matter, or to refuse to produce any writing, object, or other thing. (Evid. Code § 911.)
- 4) Provides that communications made in the context of specified relationships are privileged, entitle the holder of the privilege to refuse to disclose, and to prevent another from disclosing, the communication. These specified relationships include: husband-wife, lawyer-client, physician-patient, clergy member-penitent, sexual assault counselor-victim, domestic violence counselor-victim, human trafficking caseworker-victim. (Evid. Code §§ 954, 980, 994, 1014, 1033, 1037.5, 1038.)
- 5) Provides that the right of any person to claim a privilege provided in statute is waived with respect to a communication protected by the privilege if any holder of the privilege, without coercion, has disclosed a significant part of the communication or has consented to disclosure made by anyone. (Evid. Code § 912(a).)
- 6) Provides that a firefighter, police officer or other law enforcement officer, EMT-I, EMT-II, EMT-P, or registered nurse who renders emergency medical services at the scene of an emergency or during an emergency air or ground ambulance transport shall only be liable in civil damages for acts or omissions performed in a grossly negligent manner or acts or omissions not performed in good faith. A public agency employing such a firefighter, police officer or other law enforcement officer, EMT-I, EMT-II, EMT-P, or registered nurse shall not be liable for civil damages if the firefighter, police officer or other law enforcement officer, EMT-I, EMT-II, EMT-P, or registered nurse is not liable. (Health & Saf. Code § 1799.106.)

- 7) Provides that every person is responsible, not only for the result of their willful acts, but also for an injury occasioned to another by the person's want of ordinary care or skill in the management of their property or person, except so far as the latter has, willfully or by want of ordinary care, brought the injury upon themselves. (Civ. Code § 1714(a).)
- 8) Provides that no person who in good faith, and not for compensation, renders emergency medical or nonmedical care at the scene of an emergency shall be liable for any civil damages resulting from any act or omission. The scene of an emergency shall not include emergency departments and other places where medical care is usually offered. This applies only to the medical, law enforcement, and emergency personnel specified in this chapter. All others rendering such care are immune from civil damages resulting from any act or omission other than acts or omissions constituting gross negligence or willful or wanton misconduct. (Health & Saf. Code § 1799.102.)
- 9) Provides that a 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 not be liable for any civil damages as a result of issuing the instructions. In addition, no EMT-II or mobile intensive care paramedic rendering care within the scope of their duties who, in good faith and in a nonnegligent manner, follows such instructions of a physician or nurse shall be liable for any civil damages as a result of following such instructions. (Health & Saf. Code § 1799.104.)

This bill:

- 1) Authorizes an EMS provider to establish a peer support and crisis referral program. The program shall be responsible for providing a network of peer representatives, reflective of the provider's workforce both in job positions and personal experiences, who are available to come to the aid of their fellow employees on a broad range of emotional or professional issues.
- 2) Specifies the matters for which the program can provide employee support and referral services, including substance abuse and grief support.
- 3) Provides that an EMS personnel has a right to refuse to disclose, and to prevent another from disclosing, a confidential communication between the EMS personnel and a peer support team member made while the peer support team member was providing peer support services, or a confidential communication made to a crisis hotline or crisis referral service, other than in a criminal proceeding, whether or not a party to an action. However, such communications may be disclosed under the following circumstances:

- a) To refer an EMS personnel to receive crisis referral services by a peer support team member.
 - b) During a consultation between two peer support team members.
 - c) If the peer support team member reasonably believes that disclosure is necessary to prevent death, substantial bodily harm, or commission of a crime.
 - d) If the EMS personnel expressly agrees in writing that the confidential communication may be disclosed.
 - e) In a criminal proceeding.
 - f) If otherwise required by law.
- 4) Authorizes, notwithstanding the above, a crisis hotline or crisis referral service to disclose confidential information communicated by an EMS personnel to prevent reasonably certain death, substantial bodily harm, or the commission of a crime.
- 5) Clarifies that these provisions do not limit an obligation of a mandated reporter to report instances of abuse as required by law.
- 6) Provides that a peer support team member who provides peer support services and has completed a specified training course, and the EMS provider that employs them, are not liable for damages, including personal injury, wrongful death, property damage, or other loss related to an act, error, or omission in performing peer support services, unless the act, error, or omission constitutes gross negligence or intentional misconduct. This does not apply to an action for medical malpractice.
- 7) Prohibits a peer support team member from providing peer support services in any of the following circumstances:
- a) If, when serving in a peer support role, the peer support team member's relationship with an EMS personnel receiving peer support services could be reasonably expected to impair objectivity, competence, or effectiveness in providing peer support, or would otherwise risk exploitation or harm to the EMS personnel.
 - b) If the peer support team member and the EMS personnel receiving peer support services were involved as participants or witnesses to the same specific incident.
 - c) If the peer support team member and the EMS personnel receiving peer support services are both involved in a shared active or ongoing investigation.
- 8) Defines the relevant terms, including:
- a) "Confidential communication" means any information, including written or oral communication, transmitted between an EMS personnel, a peer support team member, or a crisis hotline or crisis referral service staff

member while the peer support team member provides peer support services or the crisis hotline or crisis referral service staff member provides crisis services, and in confidence by a means that, as far as the EMS personnel is aware, does not disclose the information to third parties other than those who are present to further the interests of the EMS personnel in the delivery of peer support services or those to whom disclosures are reasonably necessary for the transmission of the information or an accomplishment of the purposes for which the peer support team member is providing services. "Confidential communication" does not include a communication in which the EMS personnel discloses the commission of a crime or a communication in which the EMS personnel's intent to defraud or deceive an investigation into a critical incident is revealed.

- b) "EMS personnel" means currently licensed California health care professionals who provide emergency medical care or support providers of emergency medical care, including physicians, physician assistants, registered nurses, nurse practitioners, nurse-midwives, clinical nurse specialists, nurse anesthetists, mobile intensive care nurses, and currently licensed or certified California paramedics and advanced emergency medical technicians, emergency medical technicians, lifeguards, and emergency medical dispatchers who are not also described in Section 8669.15 or 8669.3 of the Government Code.

COMMENTS

1. Stated intent of the bill

According to the author:

The Emergency Medical Services Peer Support Bill aims to address the mental health and well-being of emergency medical technicians (EMTs) and other ambulance employees by introducing a peer-to-peer support program. This legislation recognizes the unique challenges faced by these frontline responders and seeks to establish a network of peer representatives to provide assistance on emotional and professional issues.

2. Emergency services and critical incident stress

The federal Occupational Safety and Health Administration (OSHA) put out a safety and health publication entitled "Critical Incident Stress Guide."¹ It details how workers responding to emergency events or disasters will see and experience events, including exposure to death, serious injuries, and threatening situations, that will strain their

¹ *Critical Incident Stress Guide*, OSHA, <https://www.osha.gov/emergency-preparedness/guides/critical-incident-stress>. All internet citations are current as of June 14, 2024.

ability to function. The guide indicates that the physical and psychological well-being of those experiencing this stress, as well as their future ability to function through a prolonged response, will depend upon how they manage this stress. However, OSHA has no standards that apply to the hazards associated with critical incident stress.

According to a study published by the International Society for Traumatic Stress Studies, "Guidelines for Peer Support in High-Risk Organizations," peer support programs have emerged as standard practice for supporting staff in many high-risk organizations, organizations that routinely expose their personnel to potentially traumatic events, such as emergency services.² The study indicated the consensus view that all high-risk industries should have a well-planned, integrated, and tailored peer support program for their employees.

3. Establishing peer support programs for emergency personnel

In order to address the serious issues identified above in two specified fields, two programs were created by statute. AB 1116 (Grayson, Ch. 388, Stats. 2019) established the California Firefighter Peer Support and Crisis Referral Services Act and AB 1117 (Grayson, Ch. 621, Stats. 2019) established the Law Enforcement Peer Support and Crisis Referral Services Program. The laws authorize the creation of peer support programs that are responsible for providing an agency-wide network of peer representatives, reflective of the respective agencies' workforces both in job positions and personal experiences, who are available to come to the aid of their fellow employees on a broad range of emotional or professional issues.

This bill provides for such programs to be established for EMS personnel, defined as currently licensed California health care professionals who provide emergency medical care or support providers of emergency medical care, including physicians, physician assistants, registered nurses, nurse practitioners, nurse-midwives, clinical nurse specialists, nurse anesthetists, mobile intensive care nurses, and currently licensed or certified California paramedics and advanced emergency medical technicians, emergency medical technicians, lifeguards, and emergency medical dispatchers, as provided.

Similar to the programs for firefighters and law enforcement, as well as laws in other states, this bill provides a qualified immunity to EMS personnel for acts, errors, or omissions in performing peer support services that result in damages unless those acts, errors, or omissions constitute gross negligence or intentional misconduct. Standards of care function to guide the types of behavior public policy dictate in certain situations. By providing immunity from liability in this context, emergency service personnel will

² Mark C. Creamer, et al., *Guidelines for Peer Support in High-Risk Organizations: An International Consensus Study Using the Delphi Method* (April 2012) *Journal of Traumatic Stress*, <https://pubmed.ncbi.nlm.nih.gov/22522726/>.

arguably be further incentivized to perform peer support services without the fear of liability for actions that are negligent.

In addition, this bill, similar to the others discussed, protects and makes confidential communications between EMS personnel and peer support team members while they are providing peer support services, as well as communications with a crisis hotline or crisis referral service. Other than in a criminal proceeding, an EMS personnel, whether or not a party to an action, has a right to refuse to disclose, and to prevent another from disclosing, such confidential communications.

These provisions are aimed at addressing the issues surrounding EMS personnel's reluctance to communicate with a peer support team member and otherwise take advantage of the services of a peer support program for fear of disclosure and the attendant consequences, including social stigma and repercussions on their employment.

4. Extending protections to these communications

Courts have made clear that confidentiality and privilege are two distinct concepts. (*See United States v. Chase* (9th Cir. 2003) 340 F.3d 978, 982.) Confidentiality refers to the "broad blanket of privacy" that laws place over certain relationships. Generally, these laws both establish a testimonial privilege and "create a more general blanket of confidentiality to cover the relationship in all contexts." Privilege generally means the specific right of a party to a certain relationship to prevent another party to the relationship from testifying in a proceeding.

As a general matter, these laws function to exclude evidence, no matter how relevant or reliable that evidence might be, in order to promote some other extrinsic policy. Because they tend to suppress otherwise relevant evidence, statutory privileges are strictly construed and in California, unlike under federal law, the courts are not free to create new privileges as a matter of judicial policy; they may only apply those privileges created by statute or those that arise out of state or federal constitutional law. (Evid. Code § 911; *Sullivan v. Superior Court* (Spingola) 29 Cal.App.3rd 64 (1972).)

The Legislature has recognized that certain relationships should be protected under statutory privileges and duties of confidentiality, generally a professional who provides counseling services with a person who receives those services. The purpose is to foster the effective rendering of the professional service offered by the counselor. Without such protections, these types of services would not be utilized to the same extent.

As discussed above, the trauma routinely suffered by EMS personnel as a result of their occupations is real and widespread. The effects can be devastating for the individuals involved. Therefore, this bill seeks to encourage such individuals to seek the assistance

of peer support team members to address their trauma and its effects by making the communications between those parties “confidential.”

Regardless of whether they are a party to a proceeding, other than criminal proceedings, EMS personnel are granted the right to refuse to disclose, and to prevent another from disclosing, a confidential communication between them and a peer support team member made while the peer support team member was providing peer support services, or a confidential communication made to a crisis hotline or crisis referral service. However, the bill recognizes situations wherein such communications can be divulged, including:

- To refer an EMS personnel to receive crisis referral services by a peer support team member.
- During a consultation between two peer support team members.
- If the peer support team member reasonably believes that disclosure is necessary to prevent death, substantial bodily harm, or commission of a crime.
- If the EMS personnel expressly agrees in writing that the confidential communication may be disclosed.
- In a criminal proceeding.
- If otherwise required by law.

In addition, a crisis hotline or crisis referral service may disclose confidential information communicated by an EMS personnel to prevent reasonably certain death, substantial bodily harm, or commission of a crime. The bill also makes clear that none of this absolves a mandated reporter from reporting instances of abuse as required by law.

Similar to counselors in other contexts, peer support team members perform services that assist emergency service personnel affected by a critical incident in coping with critical incident stress or mitigating reactions to critical incident stress to reduce the risk of post-traumatic stress injuries.

Many of these provisions mirror those in existing schemes. The author has agreed to add another exception found in other versions for disclosures made pursuant to a court order in a civil proceeding.

Another protection the bill has to mitigate concerns about limiting the disclosure of these communication is a provision that limits when peer support services can be provided and between whom. A peer support team member is prohibited from providing peer support services in any of the following circumstances:

- If, when serving in a peer support role, the peer support team member’s relationship with an EMS personnel receiving peer support services could be reasonably expected to impair objectivity, competence, or effectiveness in

providing peer support, or would otherwise risk exploitation or harm to the EMS personnel.

- If the peer support team member and the EMS personnel receiving peer support services were involved as participants or witnesses to the same specific incident.
- If the peer support team member and the EMS personnel receiving peer support services are both involved in a shared active or ongoing investigation.

This limits any conflicts that may otherwise arise in these situations.

5. Providing immunity

As a general rule, California law provides that persons are responsible, not only for the result of their willful acts, but also for an injury occasioned to another by their want of ordinary care or skill in the management of their property or person, except so far as the latter has, willfully or by want of ordinary care, brought the injury upon themselves. (Civ. Code § 1714(a).) Although immunity provisions are rarely preferable, the Legislature has in limited scenarios approved measured immunity from liability (as opposed to blanket immunities) to promote other policy goals that could benefit the public.

As a matter of policy, the Legislature has generally been reluctant to further immunize the acts of public employees and public agencies except in narrow circumstances. Immunity from liability disincentivizes careful planning and acting on the part of governmental actors. When an agency enjoys immunity from civil liability, it is relieved of the responsibility to act with due regard and an appropriate level of care in the conduct of its activities. Immunity provisions are also disfavored because they, by their nature, preclude parties from recovering when they are injured, and force injured parties to absorb losses for which they are not responsible. Liability acts not only to allow a victim to be made whole, but to encourage appropriate compliance with legal requirements.

Immunities are generally afforded when needed to incentivize certain conduct, such as the provision of life-saving or other critical services. Examples include protections for use of CPR, Civil Code Section 1714.2; use of an automated external defibrillator, Civil Code Section 1714.21; use of opiate overdose treatment, Civil Code Section 1714.22; providing emergency care at the scene of an emergency, Health and Safety Code Sections 1799.102, 1799.106; and performing emergency rescue services, Health and Safety Code Section 1799.107. However, as indicated above, rarely is immunity absolute, and these immunities generally do not cover grossly negligent conduct or intentional misconduct.

This bill provides a limited immunity for the provision of peer support services. These protections serve to combat any hesitance on the part of peer support team members to support and provide services to fellow emergency service personnel for fear of liability.

Although immunity is generally disfavored, ensuring these services are provided to this population is arguably of significant public interest. Furthermore, this immunity does not shield gross negligence or intentional misconduct in the provision of these services.

In addition, this immunity only attaches if the relevant peer support team member went through specified training to further ensure they provide these critical services in a competent manner. Ensuring this training covers the appropriate topics and is effective is critical for the success of peer support services.

Also mitigating concerns about extending this qualified immunity are the provisions that limit the circumstances in which peer support services can be provided, as discussed above.

SUPPORT

None known

OPPOSITION

None known

RELATED LEGISLATION

Pending Legislation: AB 1843 (Rodriguez, 2024) requires emergency ambulance providers to establish a peer support program to provide peer support services upon request of their employees. It provides that communications between emergency ambulance employees and a peer support team member, or a crisis hotline or crisis referral service, are confidential, as provided. AB 1843 immunizes a peer support team member from specified liability arising from the provision of peer support services. AB 1843 is currently in this Committee.

Prior Legislation:

AB 1116 (Grayson, Ch. 388, Stats. 2019) *See* Comment 3.

AB 1117 (Grayson, Ch. 621, Stats. 2019) *See* Comment 3.

AB 1119 (Limón, Ch. 323, Stats. 2017) authorized, during the provision of emergency services and care, the communication of patient information for patients who are developmentally disabled and have a mental health disorder, between a physician and surgeon, licensed psychologist, social worker with a master's degree in social work, licensed marriage and family therapist, licensed professional clinical counselor, nurse, emergency medical personnel at the scene of an emergency or in an emergency medical

transport vehicle, or other professional person or emergency medical personnel at a licensed health facility, as specified.

AB 960 (La Suer, 2003) would have established a pilot project in which confidential communications between participants of the Los Angeles County Sheriff's Department would be privileged. It would have established a privilege for communications between a peer support counselor and a public safety officer. This bill died in the Assembly Judiciary Committee.

AB 2443 (La Suer, 2002) would have established a privilege for communications between a peer support counselor and a public safety officer. This bill died in the Assembly Judiciary Committee.

PRIOR VOTES:

Senate Health Committee (Ayes 11, Noes 0)

Assembly Floor (Ayes 71, Noes 0)

Assembly Appropriations Committee (Ayes 15, Noes 0)

Assembly Judiciary Committee (Ayes 11, Noes 0)

Assembly Health Committee (Ayes 16, Noes 0)
