

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 573 Peer Support for First Responders

SPONSOR(S): Judiciary Committee, Civil Justice Subcommittee, Casello, McClain and others

TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 160

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee	15 Y, 0 N, As CS	Padgett	Luczynski
2) Health & Human Services Committee	17 Y, 0 N	Morris	Calamas
3) Judiciary Committee	17 Y, 0 N, As CS	Padgett	Luczynski

SUMMARY ANALYSIS

First responders, such as police officers, firefighters, and paramedics, are often exposed to traumatic events that can lead to post-traumatic stress disorder (PTSD), depression, and suicide. While some first responders report positive experiences with professional mental health help, others felt more distressed after such intervention. Peer support can reduce the stigma, scheduling difficulties, lack of access, lack of trust, and fear or repercussions that may prevent first responders from seeking mental health care.

Communications between a patient and a health care practitioner are confidential under doctor-patient or psychotherapist-patient privilege unless such confidentiality is waived. Florida law does not provide confidentiality for peer support communications between or involving non-practitioners.

CS/CS/HB 573 provides confidentiality for peer support communications between a first responder and a first responder peer. The bill defines "first responder" to include a law enforcement officer, firefighter, emergency medical technician, paramedic, public safety communications officer, dispatcher, or 911 operator.

A "first responder peer" is defined as a person who:

- Is not a health care practitioner;
- Has experience working as or with a first responder regarding any physical or emotional conditions or issues associated with the first responder's employment; and
- Has been designated by the first responder's employing agency to provide peer support and has received training in providing peer support.

The bill provides four exceptions for such confidentiality, including:

- The first responder peer is a defendant in a proceeding arising from a complaint filed by the first responder;
- The first responder agrees, in writing, to allow the first responder peer to testify about or divulge information related to the peer support;
- The first responder peer suspects the first responder has committed, or intends to commit, a criminal act; or
- There are articulable facts or circumstances that would lead the first responder peer to fear for the safety of the first responder, another person, or society.

The bill defines a "peer support communication" as an oral, written, or electronic communication between a first responder and a first responder peer, made with the mutual expectation of confidentiality, while the first responder peer is acting in his or her official capacity. Accordingly, the bill provides confidentiality for those peer support communications that may not otherwise be protected by doctor-patient privilege or psychotherapist-patient privilege.

The bill has no fiscal impact to state or local governments.

The bill has an effective date of July 1, 2020.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

First Responders

A first responder is a law enforcement officer,¹ firefighter,² or an emergency medical technician or paramedic³ employed by state or local government.⁴ Additionally, a volunteer law enforcement officer, firefighter, or emergency medical technician or paramedic engaged by the state or a local government is considered a first responder of the state or local government.⁵

First responders are often exposed to incidents of death and destruction that can result in post-traumatic stress disorder (PTSD), depression, and suicide.⁶ A study by the Ruderman Family Foundation revealed that 35 percent of police officers have suffered from PTSD and 46.8 percent of firefighters have experienced suicidal thoughts.⁷ Further, a 2015 survey of 4,000 first responders found that 6.6 percent had attempted suicide, which is more than 10 times the rate in the general population.⁸ Firefighters are more likely to die by suicide than in the line of duty, according to the Firefighter Behavioral Health Alliance.⁹

Peer Support

Peer support consists of a person in stable recovery from mental health problems helping someone who needs assistance with establishing or maintaining his or her recovery.¹⁰ Peer support services include social supports, such as mentoring, training, peer-led support groups, and assistance completing everyday tasks.¹¹ Peers are not health care practitioners, but their support extends the reach of treatment beyond the clinical setting into the everyday environment of those seeking a successful, sustainable recovery process from mental health issues.¹²

A survey by the Journal of Emergency Medical Services revealed that first responders were less likely to contemplate suicide when they felt supported and encouraged at work.¹³ One study showed that

¹ The term “law enforcement officer” means any person who is elected, appointed, or employed full time by any municipality or the state or any political subdivision thereof; who is vested with authority to bear arms and make arrests; and whose primary responsibility is the prevention and detection of crime or the enforcement of the penal, criminal, traffic, or highway laws of the state. The term includes all certified supervisory and command personnel whose duties include, in whole or in part, the supervision, training, guidance, and management responsibilities of full-time law enforcement officers, part-time law enforcement officers, or auxiliary law enforcement officers but does not include support personnel employed by the employing agency. S. 943.10, F.S.

² The term “firefighter” means an individual who holds a current and valid Firefighter Certificate of Compliance or Special Certificate of Compliance issued by the Division of State Fire Marshal within the Department of Financial Services. S. 633.102, F.S.

³ The term “emergency medical technician” means a person who is certified by the Department of Health to perform basic life support. The term “paramedic” means a person who is certified by the Department of Health to perform basic and advanced life support. S. 401.23, F.S.

⁴ S. 125.01045, F.S.

⁵ *Id.*

⁶ Miriam Heyman, Jeff Dill & Robert Douglas, *The Ruderman White Paper on Mental Health and Suicide of First Responders*, RUDERMAN FAMILY FOUNDATION 7, 9 (2018),

https://issuu.com/rudermanfoundation/docs/first_responder_white_paper_final_ac270d530f8bfb (last visited Feb. 19, 2020).

⁷ *Id.* at 12.

⁸ Wes Venteicher, *Increasing suicide rates among first responders spark concerns*, FIRERESCUE NEWS, (Mar. 19, 2017), <https://www.firerescue1.com/fire-ems/articles/222673018-Increasing-suicide-rates-among-first-responders-spark-concern/> (last visited Feb. 19, 2020).

⁹ Heyman, Dill & Douglas, *supra* note 6, at 19.

¹⁰ Substance Abuse and Mental Health Services Administration, *What Are Peer Recovery Support Services?*, (2009), <https://store.samhsa.gov/system/files/sma09-4454.pdf> (last visited Feb. 19, 2020).

¹¹ *Id.*

¹² Substance Abuse and Mental Health Services Administration, *Peers*, <https://www.samhsa.gov/brss-tacs/recovery-support-tools/peers> (last visited Feb. 19, 2020)

¹³ Journal of Emergency Medical Services, *Survey Reveals Alarming Rates of EMS Provider Stress and Thoughts of Suicide*, (Sept. 28, 2015), <https://www.jems.com/2015/09/28/survey-reveals-alarming-rates-of-ems-provider-stress-and-thoughts-of-suicide/> (last visited Feb. 19, 2020).

while some firefighters reported positive experiences with professional mental health help, others felt more distressed after such intervention. Alternatively, these firefighters reported benefits from peer support, such as bonding with their fire crew after negative incidents, which can reduce the stigma, scheduling difficulties, lack of access, lack of trust, and fear or repercussions that may prevent first responders from seeking mental health care.¹⁴

Patient Confidentiality

Communications between a patient and a health care practitioner are confidential.¹⁵ Information that a patient discloses to a health care practitioner may only be disclosed:

- To other health care practitioners involved in the care of the patient;
- If the patient agrees, in writing;
- If compelled by subpoena at a deposition, evidentiary hearing, or trial for which proper notice has been given.¹⁶

Additionally, confidentiality between a patient and a psychotherapist may be waived where:

- The psychotherapist is a defendant in a proceeding arising from a complaint filed by the patient and information divulged is limited to the scope of the proceeding;
- The patient agrees, in writing, to waiver of confidentiality;
- The psychotherapist believes there is imminent risk of physical harm to the patient or other members of society. The information may only be communicated to potential victims, appropriate family members, law enforcement, or other appropriate authority. There is no liability on the part of the person disclosing information in this circumstance, and no cause of action may arise under this provision.¹⁷

However, Florida law does not provide confidentiality for peer support communications between or involving non-practitioners.

Effect of Proposed Changes

CS/CS/HB 573 provides confidentiality for peer support communications between a first responder and a first responder peer. First responders include:

- Law enforcement officers;
- Firefighters;
- Emergency medical technicians or paramedics;
- Public safety communications officers;
- Dispatchers; and
- 911 or other phone system operators whose job duties include providing support or services to first responders.

The bill defines “peer support” to mean the provision of physical, moral, or emotional support to a first responder by a first responder peer for the purpose of addressing physical or emotional conditions or other issues associated with being a first responder.

Under the bill, confidentiality applies only to communications with a first responder peer. The first responder peer cannot be a health care practitioner. He or she must have experience working as or with a first responder regarding any physical or emotional conditions or issues associated with the first responder’s employment and must be designated by the first responder’s employing agency to provide peer support.

¹⁴ Substance Abuse and Mental Health Services Administration, *First Responders: Behavioral Health Concerns, Emergency Response, and Trauma*, DISASTER TECHNICAL ASSISTANCE CENTER SUPPLEMENTAL RESEARCH BULLETIN (May 2019), 10, 12, <https://www.samhsa.gov/sites/default/files/dtac/supplementalresearchbulletin-firstresponders-may2018.pdf> (last visited Feb. 19, 2020).

¹⁵ Ss. 456.057, 456.059, 490.0147, 491.0147, and 90.503, F.S.

¹⁶ S. 456.057, F.S.

¹⁷ S. 491.0147, F.S.

The bill provides confidentiality only for peer support communication, which are oral, written, or electronic communications between a first responder and a first responder peer. These communications must be made with the mutual expectation of confidentiality, and the first responder must be acting in his or her official capacity, to trigger the confidentiality concerning physical or emotional issues relating to the first responder's employment.

The bill prevents a first responder peer from testifying about a peer support communication or otherwise divulging the information from these conversations, except when the person providing peer-to-peer support is a defendant in a proceeding arising from a complaint filed by the first responder and information divulged is limited to the scope of the proceeding. The bill also allows a first responder peer to divulge information if the first responder agrees, in writing, to allow the person to testify about or divulge information related to the peer-to-peer support.

Additionally, the first responder peer may reveal information from conversations with a first responder if he or she suspects the first responder has committed, or intends to commit, a criminal act, or if there are facts or circumstances that would lead a person to fear for the safety of the first responder, another person, or society. Such information may only be communicated to potential victims and law enforcement or other appropriate authorities. The bill provides immunity from liability under any cause of action for disclosing information in this circumstance.

The bill provides confidentiality for the peer support conversations that may not otherwise be protected by doctor-patient privilege or psychotherapist-patient privilege. The bill does not preclude first responders from engaging in confidential communications with a health care practitioner; rather, it expands the protection of confidentiality to those informal conversations with peers that relate to any physical or emotional conditions or issues associated with the first responder's employment.

The bill provides an effective date of July 1, 2020.

B. SECTION DIRECTORY:

Section 1: Creates s. 111.09, F.S., relating to peer support for first responders.

Section 2: Provides an effective date of July 1, 2020.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 29, 2020, the Civil Justice Subcommittee adopted an amendment and reported the bill favorably as a committee substitute. The amendment:

- Defined “first responder peer” and “peer support communication.”
- Required an employing agency to designate employees who are authorized to provide peer-to-peer support.
- Required the first responder peer to be acting in his or her official capacity for a peer support communication to maintain confidentiality.
- Added an exception to peer support communication confidentiality if the communication causes the first responder peer to suspect the first responder has committed, or intends to commit, a criminal act.

On February 18, 2020, the Judiciary Committee adopted two amendments and reported the bill favorably as a committee substitute. The amendments:

- Required a first responder peer to have peer support training.
- Defined “peer support.”
- Extended confidentiality protections to written or electronic peer support communications.
- Removed a first responder peer’s authorization to disclose confidential peer support communications to an appropriate family member.
- Clarified a first responder peer may disclose confidential peer support communications to both law enforcement and a potential victim.

This analysis is drafted to the committee substitute as passed by the Judiciary Committee.