

WEST VIRGINIA LEGISLATURE

2024 REGULAR SESSION

Introduced

House Bill 5377

By Delegates Hite, Stephens, Hillenbrand,
Winzenreid, Willis, Kump, Chiarelli, and Hornby

[Introduced January 31, 2024; Referred to the
Committee on the Judiciary]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article
 2 designated §21-18-1; and to amend said code by adding thereto a new section designated
 3 §57-3-11, all relating to peer support teams, peer support services, and generally allow for
 4 privileged testimonial communications between a peer support team member and an
 5 individual receiving peer support services or advice from the team member.

Be it enacted by the Legislature of West Virginia:

CHAPTER 21. LABOR.

ARTICLE 18. PEER SUPPORT TEAM MEMBER ROSTER.

§21-18-1. Definitions.

1 (a) As used in this section, "peer support team" and "peer support team member" have the
 2 same meanings as in section §57-3-11 of this code.

3 (b) An employer or organization that appoints a peer support team, or an advisor
 4 designated by an employer or organization under §57-3-11(f) of this code, shall keep a roster of
 5 the peer support team members that make up each peer support team maintained by the
 6 employer or organization. The employer, organization, or advisor shall do both of the following in
 7 the roster:

8 (1) Identify each peer support team member providing services at the time the roster is
 9 created by first and last name;

10 (2) Identify whether the member is in compliance with the peer support training
 11 requirements necessary for the testimonial privilege described in §57-3-11 of this code.

12 (c) The roster may not include the address, telephone number, or other contact information
 13 for a team member. The employer, organization, or advisor shall update the roster on a regular
 14 basis.

15 (d) The roster required by this section is not a public record under section §29B-1-2 of this
 16 code. However, the employer, organization, or advisor shall make the roster available at the

17 request of a prosecutor, investigator, or any other individual who has a legal right or duty to
 18 determine whether a peer support team member is prohibited from testifying in any proceeding to
 19 which §57-3-11 of this code applies.

CHAPTER 57. EVIDENCE AND WITNESSES.

ARTICLE 3. COMPETENCY OF WITNESSES.

§57-3-11. Privileged peer support communications.

1 (a) As used in this section:

2 "Corrections officer" has the same meaning as in §30-29-1 of this code.

3 "Emergency service personnel" includes firefighters and emergency medical workers and
 4 has the same meaning as in §30-29-1 of this code.

5 "Emergency telecommunicator" has the same meaning as in section §24-6-2 of this code.

6 "Law enforcement officer" has the same meaning as in section §30-29-1 of this code and
 7 shall include those defined as "chief executive" in §30-29-1 of this code.

8 "Peer support services" means consultation, risk assessment, referral, or on-site
 9 intervention services provided by a peer support team member to an individual experiencing
 10 psychological or physical symptoms caused by exposure to acute or chronic high stress incidents
 11 in the course of the individual's employment. "Peer support services" includes both of the
 12 following:

13 (1) Providing knowledge and experience or emotional, social, or practical support to peers;

14 (2) Helping a peer navigate available resources, including the mental health system.

15 "Peer support team member" means an individual is one of the following:

16 (A) A law enforcement officer, firefighter, emergency medical worker, or corrections officer;

17 (B) A emergency telecommunicator for law enforcement officers, or emergency service
 18 personnel;

19 (C) A civilian employee of an entity that employs law enforcement officers, firefighters,

20 emergency medical workers, or corrections officers;

21 (D) A retired peace officer, firefighter, emergency medical worker, or corrections officer
22 acting with the approval of the retired employee's former employer or the approval of the employer
23 appointing the peer support team;

24 (E) A retired emergency telecommunicator for law enforcement officers, firefighters, or
25 emergency medical workers acting with the approval of the retired emergency telecommunicator's
26 former employer or the approval of the employer appointing the peer support team.

27 (b) The individual has received not less than 16 hours of basic peer support training that
28 meets the requirements of subsection (e) of this section.

29 (c) The individual, as part of a peer support team, provides peer support services to
30 individuals with similar life experiences.

31 "Peer support team" means an organized group that has been appointed by any of the
32 following entities to provide peer support services to an employee or member:

33 (1) An employer;

34 (2) A labor organization as defined in section §21-5G-1 of this code;

35 (3) A charitable organization consisting of current or former law enforcement officers,
36 firefighters, emergency medical workers, or emergency telecommunicators of law enforcement
37 officers, firefighters, or emergency medical workers.

38 (b) Except as provided in subsection (c) of this section, a peer support team member shall
39 not testify concerning either of the following:

40 (1) A communication received from an individual who receives peer support services from
41 the peer support team member;

42 (2) The peer support team member's advice to the individual.

43 (c) The testimonial privilege established under subsection (b) of this section does not apply
44 if any of the following are true:

45 (1) The communication or advice indicates clear and present danger to the individual who

46 receives peer support services or to other persons.

47 (2) The individual who received peer support services expressly consents to the testimony.

48 (3) If the individual who received peer support services is deceased, the surviving spouse
49 or the executor or administrator of the estate of the deceased individual expressly consents.

50 (4) The individual who received peer support services voluntarily testifies, in which case
51 the peer support team member may be compelled to testify on the same subject.

52 (5) The court in camera determines that the information communicated by the individual
53 who received peer support services is not germane to the relationship between the individual and
54 the peer support team member.

55 (6) The communication or advice pertains or is related to any criminal act.

56 (d) For purposes of subsection (c)(1) of this section, indications of past or present abuse or
57 neglect of a child constitute a clear and present danger.

58 (e) To receive the testimonial privilege established under subsection (b) of this section, a
59 peer support team member must complete not less than eight hours of basic peer support training
60 every two years.

61 (f) For the testimonial privilege established under subsection (b) of this section to apply to a
62 communication made at the scene of and immediately after an incident that involves a substantial
63 risk of serious physical harm to persons, serious physical harm to persons, or the loss of human
64 life, the peer support team member must have provided the peer support services at the request of
65 the recipient and at the direction of the appointing entity listed in division (A)(7) of this section.

66 (g) An employer or organization that appoints a peer support team may designate any of
67 the following individuals as an advisor to ensure team members are appropriately trained and are
68 providing proper peer support services:

69 (1) An individual licensed to practice medicine and surgery or osteopathic medicine and
70 surgery by the state medical board, including such an individual who has satisfactorily completed a
71 residency training program in psychiatry;

- 72 (2) An individual licensed under §27-1-10 of this code to practice psychology;
- 73 (3) A advanced practice registered nurse as defined in section §30-7-1 of this code who
74 holds a psychiatric-mental health credential issued by the American nurses credentialing center or
75 a successor organization;
- 76 (4) A certified nurse practitioner as defined in §9-4B-1 of this code who holds a psychiatric-
77 mental health credential issued by the American nurses credentialing center or a successor
78 organization;
- 79 (5) A licensed professional clinical counselor or licensed professional counselor authorized
80 to practice under Chapter 30 of this code;
- 81 (6) A licensed independent social worker or licensed social worker authorized to practice
82 under Chapter 30 of this code.
- 83 (h) The training required for a peer support team member under subsection (a)(6)(b) of this
84 section shall include the following topics:
- 85 (1) An introduction to peer support services and basic peer support skills;
- 86 (2) Understanding and identifying the risk factors of mental health problems for the peer
87 support team member's peers;
- 88 (3) Understanding confidentiality and privacy for privileged communications;
- 89 (4) Identifying local mental health support resources;
- 90 (5) Understanding the importance of engaged communication, listening, and conflict
91 resolution in the context of providing peer support services.

NOTE: The purpose of this bill is to allow for privileged testimonial communications between a peer support team member and an individual receiving peer support services or advice from the team member.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.