

116TH CONGRESS
2D SESSION

S. 3434

To make Federal law enforcement officer peer support communications confidential, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MARCH 11, 2020

Ms. CORTEZ MASTO (for herself and Mr. GRASSLEY) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To make Federal law enforcement officer peer support communications confidential, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Confidentiality Oppor-
5 tunities for Peer Support Counseling Act” or the “COPS
6 Counseling Act”.

7 **SEC. 2. CONFIDENTIALITY OF PEER SUPPORT COMMUNICA-**
8 **TIONS.**

9 (a) DEFINITIONS.—In this section:

1 (1) LAW ENFORCEMENT AGENCY.—The term
2 “law enforcement agency” means a Federal agency
3 that employs a law enforcement officer.

4 (2) LAW ENFORCEMENT OFFICER.—The term
5 “law enforcement officer” has the meaning given the
6 term “Federal law enforcement officer” in section
7 115 of title 18, United States Code.

8 (3) PEER SUPPORT COMMUNICATION.—The
9 term “peer support communication” includes—

10 (A) an oral or written communication
11 made in the course of a peer support counseling
12 session;

13 (B) a note or report arising out of a peer
14 support counseling session;

15 (C) a record of a peer support counseling
16 session; or

17 (D) with respect to a communication made
18 by a peer support participant in the course of
19 a peer support counseling session, another com-
20 munication, regarding the first communication,
21 that is made between a peer support specialist
22 and—

23 (i) another peer support specialist;

24 (ii) a staff member of a peer support
25 counseling program; or

1 (iii) a supervisor of the peer support
2 specialist.

3 (4) PEER SUPPORT COUNSELING PROGRAM.—

4 The term “peer support counseling program” means
5 a program provided by a law enforcement agency
6 that provides counseling services from a peer sup-
7 port specialist to a law enforcement officer of the
8 agency.

9 (5) PEER SUPPORT COUNSELING SESSION.—

10 The term “peer support counseling session” means
11 any counseling formally provided through a peer
12 support counseling program between a peer support
13 specialist and one or more law enforcement officers.

14 (6) PEER SUPPORT PARTICIPANT.—The term
15 “peer support participant” means a law enforcement
16 officer who receives counseling services from a peer
17 support specialist.

18 (7) PEER SUPPORT SPECIALIST.—The term
19 “peer support specialist” means a law enforcement
20 officer who—

21 (A) has received training in—

22 (i) peer support counseling; and

23 (ii) providing emotional and moral
24 support to law enforcement officers who
25 have been involved in or exposed to an

1 emotionally traumatic experience in the
2 course of employment; and

3 (B) is designated by a law enforcement
4 agency to provide the services described in sub-
5 paragraph (A).

6 (b) PROHIBITION.—Except as provided in subsection
7 (c), a peer support specialist or a peer support participant
8 may not disclose the contents of a peer support commu-
9 nication to an individual who was not a party to the peer
10 support communication.

11 (c) EXCEPTIONS.—Subsection (b) shall not apply to
12 a peer support communication if—

13 (1) the peer support communication contains—

14 (A) an explicit threat of suicide;

15 (B) an explicit threat of imminent and se-
16 rious physical bodily harm or death to a clearly
17 identified or identifiable individual;

18 (C) information—

19 (i) relating to the abuse or neglect
20 of—

21 (I) a child; or

22 (II) an older or vulnerable indi-
23 vidual; or

24 (ii) that is required by law to be re-
25 ported; or

1 (D) an admission of criminal conduct;

2 (2) the disclosure is permitted by each peer
3 support participant who was a party to, as applica-
4 ble—

5 (A) the peer support communication;

6 (B) the peer support counseling session out
7 of which the peer support communication arose;

8 (C) the peer support counseling session of
9 which the peer support communication is a
10 record; or

11 (D) the communication made in the course
12 of a peer support counseling session that the
13 peer support communication is regarding; or

14 (3) a court of competent jurisdiction issues an
15 order or subpoena requiring the disclosure of the
16 peer support communication.

17 (d) RULE OF CONSTRUCTION.—Nothing in sub-
18 section (b) shall be construed to prohibit the disclosure
19 of—

20 (1) an observation made by a law enforcement
21 officer of a peer support participant outside of a
22 peer support counseling session; or

23 (2) knowledge of a law enforcement officer
24 about a peer support participant not gained from a
25 peer support communication.

1 (e) DISCLOSURE OF RIGHTS.—Before the initial peer
2 support counseling session of a peer support participant,
3 a peer support specialist shall inform the peer support
4 participant in writing of the confidentiality requirement
5 under subsection (b) and the exceptions to the require-
6 ment under subsection (c).

7 **SEC. 3. BEST PRACTICES AND SUPPORT.**

8 (a) DEFINITIONS.—In this section:

9 (1) FIRST RESPONDER.—The term “first re-
10 sponder” has the meaning given the term “public
11 safety officer” in section 1204 of title I of the Omni-
12 bus Crime Control and Safe Streets Act of 1968 (34
13 U.S.C. 10284).

14 (2) FIRST RESPONDER AGENCY.—The term
15 “first responder agency” means a Federal, State,
16 local, or Tribal agency that employs or otherwise en-
17 engages the services of a first responder.

18 (3) PEER SUPPORT COUNSELING PROGRAM.—
19 The term “peer support counseling program” means
20 a program provided by a first responder agency that
21 provides counseling services from a peer support spe-
22 cialist to a first responder of the first responder
23 agency.

24 (4) PEER SUPPORT PARTICIPANT.—The term
25 “peer support participant” means a first responder

1 who receives counseling services from a peer support
2 specialist.

3 (5) PEER SUPPORT SPECIALIST.—The term
4 “peer support specialist” means a first responder
5 who—

6 (A) has received training in—

7 (i) peer support counseling; and

8 (ii) providing emotional and moral
9 support to first responders who have been
10 involved in or exposed to an emotionally
11 traumatic experience in the course of the
12 duties of the first responder; and

13 (B) is designated by a first responder
14 agency to provide the services described in sub-
15 paragraph (A).

16 (b) REPORT ON BEST PRACTICES.—Not later than
17 2 years after the date of enactment of this Act, the Attor-
18 ney General, in coordination with the Secretary of Health
19 and Human Services, shall develop a report on best prac-
20 tices and professional standards for peer support coun-
21 seling programs for first responder agencies that in-
22 cludes—

23 (1) advice on—

24 (A) establishing and operating peer sup-
25 port counseling programs; and

1 (B) training and certifying peer support
2 specialists;

3 (2) a code of ethics for peer support specialists;

4 (3) recommendations for continuing education
5 for peer support specialists;

6 (4) advice on disclosing to first responders any
7 confidentiality rights of peer support participants;

8 and

9 (5) information on—

10 (A) the different types of peer support
11 counseling programs in use by first responder
12 agencies;

13 (B) any differences in peer support coun-
14 seling programs offered across categories of
15 first responders; and

16 (C) the important role senior first respon-
17 ders play in supporting access to mental health
18 resources.

19 (c) IMPLEMENTATION.—The Attorney General shall
20 support and encourage the implementation of peer support
21 counseling programs in first responder agencies by—

22 (1) making the report developed under sub-
23 section (b) publicly available on the website of the
24 Department of Justice; and

- 1 (2) providing a list of peer support specialist
- 2 training programs on the website of the Department
- 3 of Justice.

○