

CHAPTER 236
FORMERLY
SENATE BILL NO. 174
AS AMENDED BY
SENATE AMENDMENT NO. 1
AND
HOUSE AMENDMENT NO. 2

AN ACT TO AMEND TITLE 10, CHAPTER 43 OF THE DELAWARE CODE AS IT RELATES TO EVIDENCE AND WITNESSES.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Title 10, Chapter 43, Subchapter I, of the Delaware Code by making insertions as shown by underlining to state as follows:

“§4319. Confidential communications involving first responders.

(a) For purposes of this section:

1. “Participant” means an individual who participates either in a group or individual critical incident stress management team service.

2. “Critical incident” means a situation or incident which, during the course of his or her duties, causes, or may cause, a first responder to experience unusually strong negative emotional or physical stress. “Critical incident” includes, but is not limited to, any encounter which may result in the death of or serious injury to another person or the imminent potential of such death or serious bodily injury, fatal motor vehicle accidents, child abuse investigations, death investigations and large scale man-made or natural disasters.

3. “Critical Incident Stress Management team” or “CISM” means a team composed of members of a state, county or municipal law enforcement, fire or emergency medical agency that is trained, in accordance with standards established by a nationally accredited critical incident stress management organization or network and recognized by the Council on Police Training, to assist and provide support to a first responder who has been involved in a critical incident that may affect, or has affected, the person’s work performance or general well-being.

4. “Critical incident stress management services” means consultation, risk assessment, education, intervention, and other crisis intervention services provided by a critical incident stress management team to a first responder prior to, during or after a critical incident.

5. “Critical incident stress management team member” means an individual who is specially trained to provide critical incident stress management services and meets the requirements of a nationally accredited critical incident stress management organization or network which has been recognized by the Council on Police Training and has been approved by the Colonel or Chief of the police, fire or emergency medical services agency of which the individual is a member and has been approved to function as a CISM team member prior to and at the time the counseling takes place.

6. “First responders” shall mean federal, state and local law enforcement officers, fire, and emergency medical services personnel, hazardous materials response team members, 911 dispatchers, or any individual who is responsible for the protection and preservation of life, property, and evidence, and has been sent or directed to respond to a request for assistance as a result of a critical incident.

7. “Law enforcement officer” means a police officer as defined in 11 Del. C. §9200(b).

(b) Except as provided in subsection (d) of this section, all proceedings, communications and records, including, but not limited to, any information acquired by a critical incident stress management team, or critical incident management stress management team member, from a first responder who has, or is obtaining, assistance from the team, or team member, is confidential and is not subject to disclosure through compulsory legal process or otherwise discoverable or admissible in evidence in any action, including but not limited to, any legal proceeding, trial or investigation unless the confidentiality is waived by the affected first responder.

(c) Except as provided under subsection (d), a CISM team member who is conducting a critical incident stress management counseling service and informs the participant and/or first responder that the service is being conducted pursuant to the provisions in §4319, shall not be compelled to disclose any communications made by the affected first responder in any action, including, but not limited to, any legal proceeding, trial or investigation, without the consent of the affected first responder.

(d) Exceptions. The privileges established under subsections (b) and (c) are not applicable if:

1. The communication indicates an intent to engage in conduct likely to result in imminent death or serious physical injury to the first responder who received critical incident stress management services or another individual;

2. The first responder who obtained critical incident stress management services expressly waives the privilege or gives consent to disclosure of the privileged communication;

3. The first responder who obtained critical incident stress management services is deceased and the surviving spouse or the executor or administrator of the estate of the deceased first responder expressly waives the privilege or gives consent to disclosure of the privileged communications.

4. The first responder who received critical incident stress management services sought or obtained the services to enable or aid anyone to commit or plan to commit what the first responder who received critical incident

stress management services knew, or reasonably should have known, was a crime or fraud or mental or physical injury to the first responder who received critical incident stress management services or another individual.

(e) Information otherwise available from the original source shall not be immune from discovery or use in any civil or criminal action merely because the information was presented at a time the first responder obtained critical incident stress management services if the testimony sought is otherwise permissible and discoverable.

Approved May 10, 2012