

LAWS OF DELAWARE
VOLUME 84
CHAPTER 224
152nd GENERAL ASSEMBLY
FORMERLY
SENATE BILL NO. 167

AN ACT TO AMEND TITLE 10 OF THE DELAWARE CODE RELATING TO CONFIDENTIAL COMMUNICATIONS INVOLVING FIRST RESPONDERS, CIVILIAN EMPLOYEES, OR THEIR FAMILIES.

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

Section 1. Amend § 4319, Title 10 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows and by redesignating Delaware Code provisions accordingly:

§ 4319. Confidential communications involving first ~~responders~~ responders, civilian employees, or their families.

(a) For purposes of this section:

(1) “Civilian employee” means an employee of a law-enforcement, fire, or emergency medical services agency who is not a first responder.

(1) ~~(2)~~ “Critical incident” means a situation or incident which, during the course of his or her duties, causes, a first responder’s duties, causes or may cause, cause a first responder to experience unusually strong negative emotional or physical stress. “Critical incident” includes, but is not limited to, includes any encounter which that 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 investigations, large scale man-made or natural disasters, disasters, and the cumulative stress of exposure to situations or incidents during the course of a first responder’s duties.

(2) ~~(3)~~ “Critical incident stress management services” or “CISM services” means consultation, risk assessment, education, intervention, and other crisis intervention services provided by a critical incident stress management team CISM team or CISM team member to a first responder prior to, before, during during, or after a critical incident.

(3) ~~(4)~~ “Critical incident stress management team” or “CISM team” 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 CISM team members who 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) ~~(5)~~ “Critical incident stress management team member” or “CISM team member” means an individual who satisfies all of the following:

a. ~~Is is~~ specially trained to provide critical incident stress management services and meets CISM services 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.

b. Meets the requirements of a nationally accredited critical incident stress management organization or network ~~which that~~ 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 Training.

c. ~~and has~~ Has been approved to function as a CISM team member ~~prior to and at the time the counseling takes place.~~ by the colonel or chief of the police, fire, or emergency medical services agency of which the individual is a member.

(5) ~~(6)~~ “First responders” shall mean means federal, state State and local law-enforcement officers, fire, fire and emergency medical services personnel, hazardous materials response team members, 911 dispatchers, chaplains, 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) “Immediate family member” means as “family” is defined in § 901 of Title 10.

(7) ~~(9)~~ “Participant” means an individual who participates either in a group or individual critical incident stress management team service. any of the following:

a. A first responder who obtains or has obtained CISM services or wellness program services.

b. A first responder’s immediate family member who obtains or has obtained wellness program services.

c. A civilian employee who obtains or has obtained wellness program services.

d. A civilian employee’s immediate family member who obtains or has obtained wellness program services.

(10) “Trained peer support member” means a first responder designated by a state, county, or municipal law-enforcement, fire, or emergency medical services agency, with approval from the agency’s colonel or chief, and specially trained to provide a participant with wellness program services.

(11) “Wellness program” means a voluntary and comprehensive health initiative designed to improve the well-being of participants through the use of trained peer support members.

(12) “Wellness program services” means services provided by a wellness program. A wellness program may offer any of the following wellness program services:

a. Counseling.

b. Spiritual guidance.

c. Education about financial resources, health resources, legal assistance, and stress management services.

(b) Except as provided in subsection (d) of this section, all proceedings, ~~communications~~ 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 including any information acquired by a CISM team, CISM team member, or trained peer support member from a participant, are confidential. A CISM team member or trained peer support member may not be compelled to disclose the proceedings, communications, and records, including information, through compulsory legal process or otherwise discoverable or admissible in evidence in any action, including but not limited to, any legal proceeding, trial trial, or investigation unless the confidentiality is waived by the affected ~~first responder~~ participant.

(c) Except as provided under subsection (d) of this section, 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 this section, 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. The privileges in subsection (b) of this section only apply if the proceedings, communications, or records, including information, are obtained during the provision of CISM services or wellness program services.

(d) Exceptions. — The privileges established under ~~subsections (b) and (c)~~ subsection (b) of this section ~~are not applicable if:~~ do not apply if any of the following occur:

(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~~ participant or another ~~individual;~~ individual.

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

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

(4) The ~~first responder who received critical incident stress management services~~ participant sought or obtained the CISM services or wellness program 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;~~ the participant knew, or reasonably should have known, was a “crime”, as defined under § 233 of Title 11, or fraud.

(e) Information otherwise available from the original source ~~shall not be~~ is not 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~~ disclosed by a participant during CISM services or wellness program services if the testimony information sought is otherwise permissible and discoverable.

Approved September 21, 2023