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DELAWARE STATE SENATE
152nd GENERAL ASSEMBLY

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:

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

3 § 4319. Confidential communications involving first ~~responders~~ responders, civilian employees, or their families.

4 (a) For purposes of this section:

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

7 (1) ~~(2)~~ “Critical incident” means a situation or incident which, during the course of his or her duties, causes, a
8 first responder’s duties, causes or may ~~cause~~, cause a first responder to experience unusually strong negative emotional
9 or physical stress. “Critical incident” ~~includes, but is not limited to,~~ includes any encounter which that may result in the
10 death of or serious injury to another person or the imminent potential of such death or serious bodily injury, fatal motor
11 vehicle accidents, child abuse investigations, death ~~investigations and investigations,~~ large scale man-made or natural
12 ~~disasters.~~ disasters, and the cumulative stress of exposure to situations or incidents during the course of a first
13 responder’s duties.

14 (2) ~~(3)~~ “Critical incident stress management services” or “CISM services” means consultation, risk
15 assessment, education, intervention, and other crisis intervention services provided by a ~~critical incident stress~~
16 ~~management team~~ CISM team or CISM team member to a first responder ~~prior to,~~ before, during during, or after a
17 critical incident.

18 (3) ~~(4)~~ “Critical incident stress management team” or “CISM team” means a team composed of members of a
19 state, county or municipal law enforcement, fire or emergency medical agency that is trained, in accordance with
20 standards established by a nationally accredited critical incident stress management organization or network and
21 recognized by the Council on Police Training, to CISM team members who assist and provide support to a first

22 responder who has been involved in a critical incident that may affect, or has affected, the person's work performance
23 or general well-being.

24 (4) ~~(5)~~ "Critical incident stress management team member" or "CISM team member" means an individual
25 who satisfies all of the following:

26 a. ~~Is~~ is specially trained to provide ~~critical incident stress management services and meets~~ CISM services
27 to assist and provide support to a first responder who has been involved in a critical incident that may affect, or has
28 affected, the person's work performance or general well-being.

29 b. Meets the requirements of a nationally accredited critical incident stress management organization or
30 network ~~which that~~ has been recognized by the Council on Police Training and has been approved by the Colonel
31 or Chief of the police, fire or emergency medical services agency of which the individual is a member Training.

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

35 (5) ~~(6)~~ "First responders" shall mean means federal, state- State and local law-enforcement officers, fire, fire
36 and emergency medical services personnel, hazardous materials response team members, 911 dispatchers, chaplains, or
37 any individual who is responsible for the protection and preservation of life, property, and evidence, and has been sent
38 or directed to respond to a request for assistance as a result of a critical incident.

39 (7) "Immediate family member" means as "family" is defined in § 901 of Title 10.

40 (7) ~~(9)~~ "Participant" means an individual who participates either in a group or individual critical incident
41 stress management team service. any of the following:

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

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

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

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

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

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

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

54 a. Counseling.

55 b. Spiritual guidance.

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

57 (b) Except as provided in subsection (d) of this section, all proceedings, ~~communications~~ communications, and
58 records, ~~including, but not limited to, any information acquired by a critical incident stress management team, or critical~~
59 ~~incident management stress management team member, from a first responder who has, or is obtaining, assistance from the~~
60 ~~team, or team member, is confidential and is not subject to disclosure~~ including any information acquired by a CISM team,
61 CISM team member, or trained peer support member from a participant, are confidential. A CISM team member or trained
62 peer support member may not be compelled to disclose the proceedings, communications, and records, including
63 information, through compulsory legal process or otherwise discoverable or admissible in evidence in any action, including
64 ~~but not limited to, any legal proceeding, trial~~ trial, or investigation unless the confidentiality is waived by the affected first
65 responder. ~~participant.~~

66 (c) ~~Except as provided under subsection (d) of this section, a CISM team member who is conducting a critical~~
67 ~~incident stress management counseling service and informs the participant and/or first responder that the service is being~~
68 ~~conducted pursuant to the provisions in this section, shall not be compelled to disclose any communications made by the~~
69 ~~affected first responder in any action, including, but not limited to, any legal proceeding, trial or investigation, without the~~
70 ~~consent of the affected first responder. The privileges in subsection (b) of this section only apply if the proceedings,~~
71 communications, or records, including information, are obtained during the provision of CISM services or wellness
72 program services.

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

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

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

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

83 (4) ~~The first responder who received critical incident stress management services~~ participant sought or
84 obtained the CISM services or wellness program services to enable or aid anyone to commit or plan to commit what
85 ~~the first responder who received critical incident stress management services knew, or reasonably should have known,~~
86 ~~was a crime or fraud or mental or physical injury to the first responder who received critical incident stress~~
87 ~~management services or another individual.~~ the participant knew, or reasonably should have known, was a “crime”, as
88 defined under § 233 of Title 11, or fraud.

89 (e) Information otherwise available from the original source ~~shall not be~~ is not immune from discovery or use in
90 any civil or criminal action merely because the information was ~~presented at a time the first responder obtained critical~~
91 ~~incident stress management services~~ disclosed by a participant during CISM services or wellness program services if the
92 ~~testimony~~ information sought is otherwise permissible and discoverable.

SYNOPSIS

This Act establishes a wellness program designed to improve the well-being of first responders and first responders’ immediate family members, as well as civilian employees of police, fire, and emergency medical services agencies and their immediate family members, through the provision of wellness program services by trained peer support members. Wellness program services may include counseling, spiritual guidance, and education about financial resources, health resources, legal assistance, and stress management services.

This Act extends the confidentiality privileges to include communications made by a first responder, the first responder’s immediate family member, a civilian employee, or a civilian employee’s immediate family member, to a trained peer support member providing wellness program services through a state, county, or municipal law-enforcement, fire, or emergency medical agency’s wellness program.

This Act adds chaplains to definition of “first responders”. This Act defines “civilian employee”.

This Act updates the definitions section to account for the creation of the wellness program.

This Act also revises the confidentiality exception in § 4319(d)(4) of Title 10. In current Code, the exception applies in certain instances where the first offender uses critical incident stress management (CISM) services to commit or attempt to commit “a crime or fraud or mental or physical injury to the first responder who received critical incident stress management services or another individual”. This Act replaces the quoted phrase with “‘crime’, as defined under § 233 of Title 11, or fraud.”

This Act also makes technical corrections to conform existing law to the standards of the Delaware Legislative Drafting Manual. The technical changes include combining the privileges to refuse to disclose any matter and refuse to produce any object or record that are covered in § 4319(b) and (c) of Title 11 in current Code into a single subsection, § 4319(b) of Title 10. This Act updates subsection (c) so that it only contains 1 subject: that the privileges in subsection (b) only apply if the proceedings, communications, or records, including information, are obtained during the provision of critical incident stress management (CISM) services or wellness program services.

Author: Senator Pinkney