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DELAWARE STATE SENATE  
146th GENERAL ASSEMBLY

SENATE BILL NO. 174

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:

1           Section 1. Amend Title 11, Chapter 43, Subchapter I, of the Delaware Code by making insertions as shown by  
2 underlining to state as follows:

3           “§4319. Confidential communications involving first responders.

4           (a) For purposes of this section:

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

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

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

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

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

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

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

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

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

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

42           1. The communication indicates clear and imminent danger to the first responder who received critical incident  
43 stress management services or to other individuals;

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

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

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

### Synopsis

First responders are placed in high-stress situations every time they are called upon to respond to an emergency or incident, since the extent of the emergency cannot be anticipated and the eventual outcome cannot be predicted. Many times first responders witness the death or serious injury to persons such as a young child or a fellow officer, become involved in a duty related shooting or in the investigation of a case where there has been a death or serious bodily injury inflicted upon a person. For example, stress caused by critical incidents have led to the law enforcement profession experiencing the second highest divorce rate in the nation. Similarly, police officers have one of the highest suicide rates among all professionals, and are more susceptible to domestic violence than those not affiliated with police work. Any first responder may develop posttraumatic stress disorder (PTSD) after experiencing a critical incident, or after being exposed over a period of time to stress that he or she was unable to alleviate. PTSD can be debilitating to a first responder's ability to function effectively in response to an emergency.

This bill creates a confidentiality privilege between the first responder and a Critical Incident Stress Management team or team member to encourage first responders to seek stress management services in order to alleviate the high levels of stress they may experience as a result of their exposure to a critical incident so that they may continue to function effectively during emergency situations.

CISM teams and team members are primarily comprised of first responders who have received training and certification from a nationally accredited CISM organization or network on peer-to-peer counseling. Peer-to-peer counseling is critical to the public safety as well as to safety and well-being of the first responder in that it is based upon trust and the confidence that comes from knowing that the officer is speaking with a peer who has had similar experiences with critical incidents. Imperative to the success of peer-to-peer counseling is confidentiality of a first responders' statements given at the time CISM counseling is obtained by the first responder.

A CISM counselor may not be compelled to testify in any legal proceeding as to statements made by a first responder who has received CISM counseling from the counselor to the extent that the statements are made during the course of a recognized CISM counseling session.

The criteria for the privilege to attach are as follows:

1. The person holding the privilege must be a first responder;
2. The first responder must be acting in the course of his duties at the time he or she is exposed to the incident;
3. The first responder must have received CISM counseling as a result of a critical incident;
4. The CISM counselor must:
  - a. Be certified by a nationally accredited Critical Incident Stress Management organization or network which has been recognized by the Council on Police Training;
  - b. Have been approved by the Colonel or Chief of his or her police, fire or emergency medical services agency to function as a CISM counselor prior to and at the time the counseling takes place;

- c. Inform the first responder and/or participant that a CISM counseling session is being conducted pursuant to the provisions of this section.

The privilege created by this bill shall not apply if:

1. The communication indicates clear and imminent danger to the first responder who received critical incident stress management services or to other individuals;
2. The first responder who obtained critical incident stress management services expressly waives the privilege or gives consent to disclosure of the privileged communication; or,
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 or gives consent to disclosure of the privileged communications.

Author: Senator Bushweller