

BILL ANALYSIS

Senate Research Center
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H.B. 2040
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Transportation & Homeland Security
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Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Critical incident stress management (CISM) and crisis response services are terms used to describe the process and the individuals that provide counseling services to individuals who, in the course of their duties, respond to critical incidents such as crime scenes, vehicle accidents, fires, and natural disasters. The emergency service providers, or "first responders," are primarily firefighters, law enforcement, medical personnel, and rescue service providers. When responding to calls of duty, these individuals often encounter horrific scenes of destruction, and trauma that may have a deep and lasting impact on their own well-being. Where available, a CISM team is often called to the scene of a critical incident to begin providing the counseling and stress management services to the first responders.

Critical incidents are typically heavily investigated and scrutinized from every angle by many entities and often result in a legal/court case. Emergency responders are de-briefed and questioned on multiple occasions and their answers are often used as testimony in subsequent court cases. The matter-of-fact nature of performing their duties is not conducive to dealing with the impact the critical event has had on the overall well-being of the first responder.

It is important to the counseling process that an emergency service responder be able to speak freely and without constraint to a CISM team member. Therefore, it is important to protect the conversation and thus the emergency service provider by allowing discussions with the CISM member to be confidential.

The purpose of H.B. 2040 is to make the testimonial privilege against disclosure of certain communications applicable to CISM team members and to provide CISM team members with immunity against tort or other civil liability arising from actions or omissions during debriefing sessions.

H.B. 2040 amends current law relating to critical incident stress management and crisis response services.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Subtitle B, Title 9, Health and Safety Code, by adding Chapter 784, as follows:

CHAPTER 784. CRITICAL INCIDENT STRESS MANAGEMENT AND CRISIS RESPONSE SERVICES

Sec. 784.001. DEFINITIONS. Defines, in this chapter, "crisis response service," "critical incident stress," "critical incident stress management service," "emergency response team member," and "emergency service provider."

Sec. 784.002. CLOSED MEETINGS. (a) Provides that except as provided by Subsection (b) and notwithstanding Chapter 551 (Open Meetings), Government Code, or any other law, a meeting in which critical incident stress management services or crisis response services are provided to an emergency service provider:

- (1) is closed to the general public; and
- (2) may be closed to any individual who was not directly involved in the critical incident or crisis.

(b) Provides that Subsection (a) does not apply if:

- (1) the emergency service provider or the legal representative of the provider expressly agrees that the meeting may be open to the general public or to certain individuals; or
- (2) the emergency service provider is deceased.

Sec. 784.003. CONFIDENTIALITY. (a) Provides that except as otherwise provided by this section:

- (1) a communication made by an emergency service provider to an emergency response team member while the provider receives critical incident stress management services or crisis response services is confidential and is prohibited from being disclosed in a civil, criminal, or administrative proceeding; and
- (2) a record kept by an emergency response team member relating to the provision of critical incident stress management services or crisis response services to an emergency service provider by the team is confidential and is not subject to subpoena, discovery, or introduction into evidence in a civil, criminal, or administrative proceeding.

(b) Authorizes a court in a civil or criminal case or the decision-making entity in an administrative proceeding to allow disclosure of a communication or record described by Subsection (a) if the court or entity finds that the benefit of allowing disclosure of the communication or record is more important than protecting the privacy of the individual.

(c) Provides that a communication or record described by Subsection (a) is not confidential if:

- (1) the emergency response team member reasonably needs to make an appropriate referral of the emergency service provider to or consult about the provider with another member of the team or an appropriate professional associated with the team;
- (2) the communication conveys information that the emergency service provider is or appears to be an imminent threat to the provider or anyone else;
- (3) the communication conveys information relating to a past, present, or future criminal act that does not directly relate to the critical incident or crisis;
- (4) the emergency service provider or the legal representative of the provider expressly agrees that the communication or record is not confidential; or
- (5) the emergency service provider is deceased.

(d) Provides that a communication or record described by Subsection (a) is not confidential to the extent that it conveys information concerning the services and care provided to or withheld by the emergency service provider to an individual injured in the critical incident or during the crisis.

Sec. 784.004. LIMITATION ON LIABILITY. (a) Provides that except as provided by Subsection (b), an emergency response team or an emergency response team member providing critical incident stress management services or crisis response services is not liable for damages, including personal injury, wrongful death, property damage, or other loss related to the team's or member's act, error, or omission in the performance of the services, unless the act, error, or omission constitutes wanton, wilful, or intentional misconduct.

(b) Provides that Subsection (a) limits liability for damages in any civil action, other than an action under Chapter 74 (Medical Liability), Civil Practice and Remedies Code.

SECTION 2. Makes application of Chapter 784, Health and Safety Code, as added by this Act, prospective.

SECTION 3. Effective date: September 1, 2011.