

CRITICAL INCIDENT STRESS MANAGEMENT SERVICES

FIRST RESPONDER CONFIDENTIALITY



LAW ENFORCEMENT & CRIMINAL JUSTICE INTERIM COMMITTEE | JUNE 21, 2017

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STATES HAVE CRITICAL INCIDENT STRESS MANAGEMENT TEAM LISTINGS*

ALABAMA	ILLINOIS	MONTANA	RHODE ISLAND
ALASKA	INDIANA	NORTH CAROLINA	SOUTH CAROLINA
ARIZONA	IOWA	NORTH DAKOTA	SOUTH DAKOTA
ARKANSAS	KANSAS	NEW JERSEY	TENNESSEE
CALIFORNIA	KENTUCKY	NEW MEXICO	TEXAS
COLORADO	LOUISIANA	NEVADA	UTAH
CONNECTICUT	MARYLAND	NEW YORK	VERMONT
DELAWARE	MASSACHUSETTES	OHIO	VIRGINIA
FLORIDA	MICHIGAN	OREGON	WASHINGTON
GEORGIA	MINNESOTA	PENNSYLVANIA	WISCONSIN
IDAHO			

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STATES HAVE CONFIDENTIALITY PROVISIONS FOR FIRST RESPONDERS**

ARIZONA	NEBRASKA
ARKANSAS	NEW HAMPSHIRE
DELAWARE	NEW MEXICO
HAWAII	OHIO
IOWA	OKLAHOMA
LOUISIANA	PENNSYLVANIA
MAINE	SOUTH CAROLINA
MICHIGAN	SOUTH DAKOTA
MISSISSIPPI	TENNESSEE
MONTANA	TEXAS
NORTH DAKOTA	VIRGINIA

*ACCORDING TO THE INTERNATIONAL CRITICAL INCIDENT STRESS FOUNDATION, INC.
<https://www.icisf.org/placeholder/>

** ACCORDING TO A SURVEY CONDUCTED BY THE NATIONAL CONFERENCE OF STATE LEGISLATURES

EXPLANATION OF CONFIDENTIALITY PROVISIONS FOR FIRST RESPONDERS

STATE	REFERENCE	PROTECTIONS	EXEMPTIONS
ARKANSAS	A.C.A. § 16-40-106	A certified peer support member shall not be compelled, without the consent of the emergency responder making the communication, to testify or in any way disclose the contents of any communication made to the certified peer support member by the emergency responder while engaged in a peer support event. This only applies when the communication was made during an actual peer support event.	<ul style="list-style-type: none"> • The certified peer support member was an initial emergency service responder, a witness, or a party to the incident that prompted the providing of the peer support event to the emergency responder. • A communication reveals the intended commission of a crime or harmful act. • The disclosure is determined to be necessary by the certified peer support member to protect any person from a clear, imminent risk of serious mental or physical harm or injury or to forestall a serious threat to the public safety. • A crime has been committed and the crime is divulged to the certified peer support member.
ARIZONA	A.R.S. § 38-1111	A critical incident stress management team member who, in the course of the member's response to a critical incident at the request of the member or member's agency, acquires information secretly and in confidence from a designated person shall not be compelled to disclose that information in a legal proceeding, trial or investigation before any agency of this state or a political subdivision of this state.	<ul style="list-style-type: none"> • The communication or advice indicates clear and present danger to the designated person who received crisis response services or to other persons. • The designated person who received crisis response services gives express consent to the testimony. • The communication or advice is made during the course of a criminal investigation. • The designated person who received crisis response services voluntarily testifies, in which case the critical incident stress management team member may be compelled to testify on the same subject. • A breach of department policy exists and that breach amounts to a violation of laws that are normally enforced by law enforcement.

<p>DELAWARE</p>	<p>10 Del.C. § 4319</p>	<p>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.</p>	<ul style="list-style-type: none"> • 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. • The first responder who obtained critical incident stress management services expressly waives the privilege or gives consent to disclosure of the privileged communication. • 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. • 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.
<p>HAWAII</p>	<p>HI Rev Stat § 78-52</p>	<p>Any communication made by a participant or counselor in a peer support counseling session conducted by a law enforcement agency or by an emergency services provider for law enforcement officers or emergency services personnel, and any oral or written information conveyed in the peer support counseling session, is privileged and may</p>	<ul style="list-style-type: none"> • Any threat of suicide or homicide made by a participant in a peer support counseling session. • Any information conveyed in a peer support counseling session relating to a threat of suicide or homicide. • Any information relating to abuse of spouses, children, or the elderly, or other

		not be disclosed by any person participating in the peer support counseling session.	<p>information that is required to be reported by law.</p> <ul style="list-style-type: none"> Any admission of criminal conduct.
IOWA	I.C.A. § 622.10	A peer support group counselor who obtains information from an officer by reason of the counselor's capacity as a peer support group counselor shall not be allowed, in giving testimony, to disclose any confidential communication properly entrusted to the counselor by the officer while receiving counseling.	<ul style="list-style-type: none"> The officer has consented to the disclosure of the information. The peer support group counselor was an initial responding officer, a witness, or a party to the incident which prompted the delivery of peer support group counseling services to the officer.
LOUISIANA	LSA-C.E. Art. 518	A trained peer support member shall not, without consent of the emergency responder making the communication, be compelled to testify about any communication made to the trained peer support member by the emergency responder while receiving peer support services.	<ul style="list-style-type: none"> The trained peer support member was an initial responding emergency responder, a witness, or a party to the incident which prompted the delivery of peer support services to the emergency responder. A communication reveals the intended commission of a crime or harmful act and such disclosure is determined to be necessary by the trained peer support member to protect any person from a clear, imminent risk of serious mental or physical harm or injury, or to forestall a serious threat to the public safety.
MAINE	25 M.R.S.A. § 4202	All proceedings, communications and records, including, but not limited to, information concerning the identity of a person seeking or being furnished assistance, connected in any way with the work of a critical incident stress management team are confidential and are not subject to compulsory legal process or otherwise discoverable or admissible in evidence in any civil action unless the confidentiality is waived by the affected person.	<ul style="list-style-type: none"> An admission by a person seeking the assistance of the critical incident stress management team that the person has committed a crime. A disclosure of information by a person seeking the assistance of a critical incident stress management team that must be reported pursuant to any applicable law. A disclosure of information by a person seeking the assistance of a critical incident stress management team that would lead one to reasonably think that the person

			<p>seeking assistance is a danger to that person or to another person.</p>
MICHIGAN	M.C.L.A. 333.20982	<p>A communication made by an emergency service provider to a Critical Incident Stress Management team member while the emergency service provider receives CISM services is confidential and shall not be disclosed in a civil, criminal, or administrative proceeding.</p>	<ul style="list-style-type: none"> • The CISM team member reasonably needs to make an appropriate referral of the emergency service provider to or consult about the emergency service provider with another member of the CISM team or an appropriate professional associated with the CISM team. • The communication conveys information that the emergency service provider is or appears to be an imminent threat to himself or herself, a CISM team member, or any other individual. • The communication conveys information relating to child or elder abuse. • The emergency service provider or the legal representative of the emergency service provider expressly agrees that the emergency service provider's communication is not confidential.
MISSISSIPPI	Miss. Code Ann. § 13-1-22.1	<p>A certified peer support member shall not be compelled, without the consent of the emergency responder making the communication, to testify or in any way disclose the contents of any communication made to the certified peer support member by the emergency responder while engaged in a peer support event. This privilege only applies when the communication was made to the certified peer support member during the course of an actual peer support event.</p>	<ul style="list-style-type: none"> • The certified peer support member was an initial emergency service responder, a witness or a party to the incident that prompted the providing of the peer support event to the emergency responder. • A communication reveals the intended commission of a crime or harmful act and such disclosure is determined to be necessary by the certified peer support member to protect any person from a clear, imminent risk of serious mental or physical harm or injury, or to forestall a serious threat to the public safety. • A crime has been committed and divulged.

MONTANA	39-74-105, MCA	Any information divulged during the provision of critical incident stress management and response services must be kept confidential and may not be disclosed to a third party or in a criminal, civil, or administrative proceeding. Records kept by critical incident stress management team members are not subject to subpoena, discovery, or introduction into evidence in a criminal, civil, or administrative action.	<ul style="list-style-type: none"> • The merits of disclosure exceed the demands of an individual's privacy. • For the appropriate referral to or consultation with other critical incident stress management team members or related qualified professionals. • The emergency service provider conveys that the provider is an imminent threat to the provider or anyone else or if the provider appears to be an imminent threat to the provider or anyone else. • The emergency services provider divulges information regarding a past, present, or future criminal act that does not involve the critical incident. • The emergency service provider or the provider's legal guardian gives consent. • The emergency service provider is deceased. • The facts divulged by the emergency service provider concern a person injured in a critical incident and the services and care provided to or withheld from that person by an emergency service provider.
NORTH DAKOTA	NDCC, 32-03-50	All records and proceedings of a critical incident stress management team in connection with its critical incident stress debriefing activities are confidential. The records and proceedings are not subject to discovery or introduction into evidence in any action or proceeding involving the emergency service personnel in attendance at a debriefing and which arises out of the matters that are the subject of the debriefing.	None.
NEBRASKA	Neb.Rev.St. § 71-7112	Any information acquired during a stress management session shall be confidential and shall not be disclosed except to the extent necessary to provide assistance pursuant to the stress management session.	None

<p>NEW HAMPSHIRE</p>	<p>N.H. Rev. Stat. § 153-A:17-a</p>	<p>Any information divulged during the provision of critical incident stress management and crisis intervention services shall be kept confidential and shall not be disclosed to a third party or in a criminal, civil, or administrative proceeding.</p>	<ul style="list-style-type: none"> • The communication indicates the existence of a danger to the individual who receives critical incident stress management and crisis intervention services or to any other person or persons. • The communication indicates the existence of past child abuse or neglect of the individual, abuse of an adult as defined by law, or family violence as defined by law. • The communication indicates the existence of past or present acts constituting an intentional tort or crime, provided the applicable statute of limitation has not expired on the act indicated.
<p>NEW MEXICO</p>	<p>N. M. S. A. 1978, § 24-10B-4.1</p>	<p>Any files or records in the possession of the bureau, a regional office or a provider containing identifying information about individuals requesting or receiving treatment or other health services and any unsubstantiated complaints received by the bureau regarding any provider shall be confidential and not subject to public inspection.</p>	<ul style="list-style-type: none"> • For use in any pending cause in any administrative proceeding or in any of the courts of this state, unless otherwise provided by law.
<p>OHIO</p>	<p>R.C. § 2317.02</p>	<p>The following persons shall not testify in certain respects:</p> <p>A critical incident stress management team member concerning a communication received from an individual who receives crisis response services from the team member, or the team member's advice to the individual, during a debriefing session.</p>	<ul style="list-style-type: none"> • The communication or advice indicates clear and present danger to the individual who receives crisis response services or to other persons. • Cases in which there are indications of present or past child abuse or neglect of the individual. • The individual who received crisis response services gives express consent to the testimony. • If the individual who received crisis response services is deceased, the surviving spouse or the executor or administrator of the estate of the deceased individual gives express consent.

			<ul style="list-style-type: none"> • The individual who received crisis response services voluntarily testifies, in which case the team member may be compelled to testify on the same subject. • The court in camera determines that the information communicated by the individual who received crisis response services is not germane to the relationship between the individual and the team member. • The communication or advice pertains or is related to any criminal act.
OKLAHOMA	12 Okl.St. Ann. § 2506.2	Any communication made by a participant or counselor in a peer support counseling session conducted by a law enforcement agency or by an emergency services provider for public safety personnel or emergency services personnel, and any oral or written information conveyed in the peer support counseling session, is confidential and may not be disclosed by any person participating in the peer support counseling session.	<ul style="list-style-type: none"> • Any threat of suicide or homicide made by a participant in a peer support counseling session. • Any information conveyed in a peer support counseling session relating to a threat of suicide or homicide. • Any information relating to abuse of children or of the elderly. • Other information that is required to be reported by law. • Any admission of criminal conduct. • Any admission of a plan to commit a crime.
PENNSYLVANIA	42 Pa.C.S.A. § 5950	A critical incident stress management team member who, while in the course of duty, has acquired information from any law enforcement officer in confidence may not be compelled or allowed without the consent of the law enforcement officer to disclose that information in a legal proceeding, trial or investigation before any government unit.	<ul style="list-style-type: none"> • The communication indicates clear and present danger to the law enforcement officer who received critical incident stress management services or to other individuals. • The law enforcement officer who received critical incident stress management services gives express consent to the disclosure. • The law enforcement officer who received critical incident stress management services is deceased and the surviving spouse or the executor or administrator of the estate of the deceased law enforcement officer gives express consent.

<p>SOUTH CAROLINA</p>	<p>Code 1976 § 23-3-85</p>	<p>Communications between a client and any member of a peer-support team, including other clients involved in the same peer-support process, shall be confidential and privileged.</p>	<ul style="list-style-type: none"> • The disclosure is authorized by the client making the disclosure. • If the client is deceased, the disclosure is authorized by the client's executor, administrator, or in the case of unadministrated estates, the client's next of kin. • The peer-support team member was an initial responding officer, witness, or party to the critical incident. • The communication was made when the member of the peer-support team was not performing official duties in the peer-support process. • The disclosure evidences a present threat to the client or to any other individual. • The disclosure constitutes an admission of a violation of state or federal law.
<p>SOUTH DAKORA</p>	<p>SDCL § 34-50-4</p>	<p>A communication made by an emergency service provider to a critical incident stress management team or to a peer support team member while the provider receives critical incident stress management services is confidential and may not be disclosed in a civil or administrative proceeding.</p>	<p>None.</p>
<p>TENNESSEE</p>	<p>T. C. A. § 10-7-504</p>	<p>All memoranda, work notes or products, case files and communications related to mental health intervention techniques conducted by mental health professionals in a group setting to provide job-related critical incident counseling and therapy to law enforcement officers, county and municipal correctional officers, dispatchers, emergency medical technicians, emergency medical technician-paramedics, and firefighters, both volunteer and professional, are confidential and privileged and are not subject to disclosure in any judicial or administrative proceeding unless all parties waive such privilege.</p>	<ul style="list-style-type: none"> • Suspected child abuse. • The professional's duty to warn about dangerous individuals. • To admit in evidence under the Rules of Evidence any memoranda, work notes or products, case files and communications which are relevant to a health care liability action or any other action by a patient against a mental health professional arising out of the professional relationship.

<p>TEXAS</p>	<p>V.T.C.A., Health & Safety Code § 784.003</p>	<p>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 may not be disclosed in a civil, criminal, or administrative proceeding.</p>	<ul style="list-style-type: none"> • 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. • 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. • The communication conveys information that the emergency service provider is or appears to be an imminent threat to the provider or anyone else. • The communication conveys information relating to a past, present, or future criminal act that does not directly relate to the critical incident or crisis. • The emergency service provider or the legal representative of the provider expressly agrees that the communication or record is not confidential. • The emergency service provider is deceased.
<p>VIRGINIA</p>		<p>A person who is a member of a critical incident stress management team shall not disclose nor be compelled to testify regarding any information communicated to him by emergency medical services or public safety personnel who are the subjects of peer support services regarding a critical incident. Such information shall also be exempt from the Virginia Freedom of Information Act. A person whose communications are privileged under subsection A may waive the privilege.</p>	<ul style="list-style-type: none"> • Criminal activity is revealed. • A member of a critical incident stress management team is a witness or a party to a critical incident that prompted the peer support services. • A member of a critical incident stress management team reveals the content of privileged information to prevent a crime against any other person or a threat to public safety. • The privileged information reveals intent to defraud or deceive the investigation into the critical incident.

			<ul style="list-style-type: none">• A member of a critical incident stress management team reveals the content of privileged information to the employer of the emergency medical services or public safety personnel regarding criminal acts committed or information that would indicate that the emergency medical services or public safety personnel pose a threat to themselves or others.
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