

2013 SENATE JUDICIARY

SB 2113

2013 SENATE STANDING COMMITTEE MINUTES

Senate Judiciary Committee
Fort Lincoln Room, State Capitol

SB2113
1/14/2013
Job #17135

Conference Committee

Committee Clerk Signature



Minutes:

Attached written testimony

Relating to confidentiality of emergency responder peer group counseling session records, relating to critical incident stress management

Senator David Hogue - Chairman

Greg Wilz - Deputy Director of the ND Dept. of Emergency Services and Director of the Division of Homeland Security - See written testimony

Senator Hogue - Asks if these would be privileged like medical records and if this would go into their personnel records.

Wilz - Replies that when there is a CISM event there is a highly trained team that are certified to do these interventions. He said there are notes taken and it is those records and that knowledge that they are seeking to exempt. The records are not part of their personnel file. He explains that this law also seeks to exempt that information that you hear that is part of the event so that you are not saying something that could further damage a person's career or life as a responder.

Senator Hogue - Said he is curious to where these records would be so they are not placed in someone's personnel file.

Senator Lyson - Questions if a supervisor orders one into treatment because erratic behavior will this hinder the supervisor getting the information to see if someone is fit for duty.

Wilz - Replies that should not hinder any supervisor and they would get a briefing on what is going on.

Senator Berry - Asks who makes up CISM.

Wilz - Replies that CISM has been around for quite a while and has been used in the military a long time. In ND it has been sponsored by the Dept. of Health for many years. He said in the last few years it has waned a bit. They have seen a real need lately.

Senator Berry - Asks if this is geared for public entities.

Wilz - Responds yes.

Senator Armstrong - Asks if this applies when a group does their own peer briefing does this apply.

Wilz - Replies that it does. He mentions that some larger departments have their own chaplaincy programs. He said many times those Chaplains are trained in CISM.

Senator Sitte - Asks if his training emphasizes confidentiality.

Wilz - Responds that CISM trained people know that this is sensitive information and that they are dealing with people's lives.

Senator Sitte - Asks what the penalty is for disclosing medical records. She said she would be concerned that well-meaning people with good intentions would accidentally slip something they know. She would hate to see them punished for a slip.

Wilz - Replies there is risk in everything that they do. He doesn't see a problem.

Senator Sitte - Asks if there is a current problem with confidentiality.

Senator Nelson - Asks what the penalty is. Someone responds it is a Class B misdemeanor.

Dan Donlin - Deputy Chief of Bismarck P.D. - Said he has been involved on both sides of a debriefing. He says any that he has been involved in there are no notes taken and does not go into a personnel file. His concern would be if a defense attorney subpoenaed the records. He said the only record is the number of people in attendance, where is located, date and time and what it was for. He said if he gets subpoenaed in and there is no protection in place he must start answering questions about what was talked about. He said he has been involved in two private peer debriefings. He said it's like psychological first aid. He said its to let them talk through their experience and what they experienced and then to let them know that what they are talking about and the things they are feeling are normal reactions to very abnormal situation. He said that is the definition of PTSD.

Senator Armstrong - Asks if this affords some protection in civil litigation as well.

Donlin - Said he believes it would.

Opposition

Jack McDonald - ND Newspaper Association and the ND Broadcaster Association - Said he is opposed to certain aspects of the bill. He thinks the law needs to be tweaked a little bit because of some problem areas. His main concern is that anyone can be a peer counselor. He has no objection to the concept but it's very vague and open ended. He would like to see it tightened up a bit.

Senator Hogue - Asks if he thinks the definition needs to be more carefully defined and if he wants to make sure the counseling session is defined or expanded to include casual conversation between officers in a hallway that now turns into a counseling session.

Neutral position - 0

Close the hearing SB2113

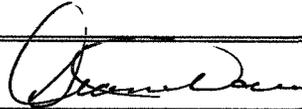
2013 SENATE STANDING COMMITTEE MINUTES

Senate Judiciary Committee
Fort Lincoln Room, State Capitol

SB 2113
1/15/2013
Job #17851

Conference Committee

Committee Clerk Signature



Minutes:

Senator David Hogue - Chairman

Committee Work

Discussion on SB2113

Senator Hogue proposes an amendment and explains the amendment. He mentions there was some concern from the newspaper and media organizations. He says he took those concerns and tried to incorporate them into this amendment. He said the primary the primary concern was that if the records are going to be excluded it should be records as part of an organized actual event and not casual conversations that go on all the time or other informal conversation. It should be specifically organized peer review event. They would also have the agency designate a peer counselor. He also said we want to make sure we are not excluding information that is readily available from another public source. Senator Lyson gives examples of discussions he has had in emergency events.

Senator Nelson moves the amendment
Senator Sitte seconded

Vote - Verbal - all yes

Senator Sitte moves a do pass as amended
Senator Grabinger seconded

Vote - 7 yes, 0 no

Senator Berry will carry

January 28, 2013

VR
1/28/13

PROPOSED AMENDMENTS TO SENATE BILL NO. 2113

Page 2, line 11, replace "Records and privileged information" with "Information"

Page 2, line 11, after "relating" insert "directly"

Page 2, line 11, replace "a" with "an organized"

Page 2, line 15, replace "process" with "counseling or public safety peer debriefing event"

Page 2, line 21, replace "a" with "an organized"

Page 2, line 29, after "agency" insert "in writing. This subsection does not preclude use of information obtained from another source"

Renumber accordingly

Date: 1/28/13
 Roll Call Vote #: 1

**2013 SENATE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. 2113**

Senate JUDICIARY Committee

Check here for Conference Committee 13.8095.01001
 Legislative Council Amendment Number Hogue amendment

Action Taken: Do Pass Do Not Pass Amended Adopt Amendment
 Rerefer to Appropriations Reconsider

Motion Made By S. Nelson Seconded By S. Sitte

Senators	Yes	No	Senator	Yes	No
Chairman David Hogue			Senator Carolyn Nelson		
Vice Chairman Margaret Sitte			Senator John Grabinger		
Senator Stanley Lyson					
Senator Spencer Berry					
Senator Kelly Armstrong					

Total (Yes) _____ No _____

Absent _____

Floor Assignment Verbal vote - all yes

If the vote is on an amendment, briefly indicate intent:

Date: 1/28/13
 Roll Call Vote #: 2

**2013 SENATE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. 2113**

Senate JUDICIARY Committee

Check here for Conference Committee

Legislative Council Amendment Number 13.8075.01001

Action Taken: Do Pass Do Not Pass Amended Adopt Amendment
 Rerefer to Appropriations Reconsider

Motion Made By S. Sitte Seconded By S. Grabinger

Senators	Yes	No	Senator	Yes	No
Chairman David Hogue	X		Senator Carolyn Nelson	X	
Vice Chairman Margaret Sitte	X		Senator John Grabinger	X	
Senator Stanley Lyson	X				
Senator Spencer Berry	X				
Senator Kelly Armstrong	X				

Total (Yes) 7 No 0

Absent 0

Floor Assignment S. Berry

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

SB 2113: Judiciary Committee (Sen. Hogue, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends **DO PASS** (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2113 was placed on the Sixth order on the calendar.

Page 2, line 11, replace "Records and privileged information" with "Information"

Page 2, line 11, after "relating" insert "directly"

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Page 2, line 21, replace "a" with "an organized"

Page 2, line 29, after "agency" insert "in writing. This subsection does not preclude use of information obtained from another source"

Renumber accordingly

2013 HOUSE JUDICIARY

SB 2113

2013 HOUSE STANDING COMMITTEE MINUTES

House Judiciary Committee
Prairie Room, State Capitol

SB 2113
March 19, 2013
Job # 20153

Conference Committee

Committee Clerk Signature	<i>Marlyp Kienzle</i>
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Explanation or reason for introduction of bill/resolution:

Relating to confidentiality of emergency responder peer or group counseling session records relating to critical incident stress management.

Minutes:

Testimony 1, 2, 3, 4, 5

Chairman Kim Koppelman: Opens SB 2113.

Mike Lynk, Director of Division of State Radio, North Dakota Department of Emergency Services (NDDDES): (1:04 - 3:17) Testimony #1, see attached.

Vice Chairman Larry Klemin: Looking at the bill on page 2, line 16-17, if the peer counselor believes a person is a danger to themselves or others. What does the peer counselor do if he determines there is a person who is a danger to themselves or others?

Mike Lynk: The specific training of CISM training and the counselor could best be answered by Dan Sweeney. He heads up the CISM TEAM.

Rep. Lois Delmore: I would assume there would also be similar policies put in place with other people in counseling as well, is that correct?

Mike Lynk: I believe that is addressed in the bill.

Rep. Lois Delmore: That is a policy with counseling

Rep. Kathy Hogan: What prompted this bill?

Mike Lynk: The bill was prompted because of the work we have done with the Emergency Service and the Health Department to help reenergize this program. The program has done very well with Law Enforcement but there is a lack in this type counseling with Fire and ambulance or EMS services.

Rep. Kathy Hogan: Have you had any complaints about the confidentiality of this information?

Mike Lynk: I know that there has been some which Mr. Wills would know about, but I myself have not. There has been some interaction with the health department to address an issue.

Rep. Diane Larson: I have participated and also have had some training. They did send out a packet to people who might have been impacted by the stressful event. There was a bit of concern because the information was sent to a lot of people and they thought the media would show up to see what the reactions would be. So this might be preempted.

Chairman Kim Koppelman: Is there is need out there or is this just to keep this program alive? Is there reluctance because of the fear public information?

Mike Lynk: I do agree there is a need out there. With the lack of this type of program you relay on peers or partners in the car to talk through those incidents. This program is a very strong program.

Chairman Kim Koppelman: Can you tell us the changes the Senate made?

Mike Lynk: It was verbiage changes Line 11, Line 15, Line 21, Line 29 and the last line.

Rep. Karen Karls: I have heard the same concerns from the Volunteer Fire Fighters Association, would they be included in this as well.

Mike Lynk; Yes

Chairman Kim Koppelman: These exist for law enforcement but EMS's are not? You are hoping to draw them in?

Mike Lynk: Yes. We are looking at peer to peer and they see the benefits of the program.

Rep. Gary Paur: You specifically mentioned volunteer, is this restricted to volunteer?

Mike Lynk: That is not the intent.

Dan Sweeney, Senior Staff Chaplain for the Bismarck Law Enforcement Chaplaincy: (12:53 to 19:21) handouts #2, 3, 4. 12:53 to 19:21. The Chaplaincy does business as the crisis shared chaplaincy. He has served in chaplaincy since 2002. He is a CISM trainer.

Rep. Gary Paur: EMS cannot speak to family and that is generally the first place you want to go. How available is this throughout the state?

Dan Sweeney: That is the realization throughout the state CISM2. Throughout the state we have volunteers. Since 1992 we have had a state team in four regions

Rep. Lois Delmore: What type of training do you have to have in order to run these peer groups or the groups counseling you do?

Dan Sweeney: A Peer Councilor needs to complete at least 24 hours of course work to as a peer counselor.

Rep. Lois Delmore: You don't have to have a counseling degree?

Dan Sweeney: No, we utilize peers who have had the training.

Rep. Lois Delmore: Your role is more as a facilitator? Do you special training to recognize signs if they are a danger to themselves or others?

Dan Sweeney: We don't leave a person alone if they express they are a danger to themselves. We also refer people to professionals.

Rep. Kathy Hogan: How many CISM training volunteers we have in North Dakota?

Dan Sweeney: We have an extensive list, which is comprehensive to the State of North Dakota.

Rep. Diane Larson: One of the questions asked earlier about program. Sometimes "Program" means it is state or federally funded, can you talk about the funding for these people who are trained to do this and how the program exists?

Dan Sweeney: Prior to the first time training the Division of Emergency Services and Trauma and also the North Dakota Department of Health teamed together and has paid to have volunteers to be trained. Prior to that time, training has been paid partially paid by others.

Rep. Diane Larson: Beyond the training, the volunteers who are doing the work, how are they funded?

Dan Sweeney: Mileage is reimbursed but no other for their services

Vice Chairman Larry Klemin: This amendment in the bill talks about exempt records and you testimony talked about confidential. This is two different categories. There is a distinction between confidential and records that are exempt. Can you address the distinction?

Mike Lynk: The people who drafted the bill and the attorneys who looked at the bill recommended that it put in this section as exempt instead of confidential.

Vice Chairman Larry Klemin: Did the person in the Attorney General's office who deals with open records look at this?

Mike Lynk: Yes they did.

Vice Chairman Larry Klemin: We are not talking about confidential, we are talking about exempt, which is different. This exception that I asked about before exempt record requirement doesn't prohibit disclosure if a person is in danger of himself or others.

If any information or opinion is disclosed violation of this section is not admissible in evidence in any personal occupation or licensing matter.

Mike Lynk: I am not versed in the section of law. What we are getting at is if someone is a danger to themselves or others we need to have some ability to advise a counselor or whoever we need to advise to take action.

Vice Chairman Larry Klemin: In the course of debriefing, if the councilor found that person committed a crime, how is that disclosed?

Dan Sweeney: In the debriefings that I have done, I have yet had someone tell me they have done something that was legally wrong. The briefings are confidential and law enforcement would be able to pick that up.

Vice Chairman Larry Klemin: This makes it be open in the public entity but requires the consent of the person being debriefed or counseled. This puts limitation on the opened records statute.

Dan Sweeney: We have to have written documentations stating we can divulge a confidence to avoid litigation. If a person divulges they are going to be a danger to themselves or others confidentiality papers would have to be signed.

Chairman Kim Koppelman: The bill has the exclusion for the person who is a clergy or peer counselor believes that someone is danger of themselves or others can keep them private. What not is addressed if it was something in the past?

Dan Sweeney: I can't answer that issue.

Rep. Gary Paur: Beginning on Line 18 it states that it is not admissible as evidence. That seems to cause another new twist on the problem.

Dan Sweeney: I think I can answer to that, as far as it cannot be divulged as evidence as I did not see it happen. So if I was put on the stand, it would be put as hearsay and that I am a third party to the communication and would not be good evidence too.

Chairman Kim Koppelman: Any one in opposition of this bill.

Jack McDonald, North Dakota Newspaper Association and North Dakota Broadcaster Association: (42:17 to 46:40) Handout #5

We are not opposite to the bill itself but to some of the wording and suggesting an amendment.

Rep. Diane Larson: Why medical information, I think this is more than medical information.

Jack McDonald: I consider counseling a medical condition.

Rep. Diane Larson: These are mostly not counselors by definition they are acting as peers not a licensed counselor.

Jack McDonald: But the bill does say that it is confidential if it is in a public safety peer counseling.

Rep. Gary Paur: Did you propose these amendments to the Senate and if you did why were they rejected?

Jack McDonald: I was not in the Senate Hearing so I submitted the proposed my amendments in writing to them. Why they did not pick them up you would have to discuss with them.

Vice Chairman Larry Klemin: It seems this bill has a qualification run on exempt record. When I read the explanation, the public entity doesn't need the consent of the person and the bill does.

Jack McDonald: That is one of the problems they are trying to cover too much they are creating a conflict.

Vice Chairman Larry Klemin: This bill says it is an exemption but it isn't and then it sets exception.

Rep. Kathy Hogan: Do you believe if we pass this law that it would be closed to the media?

Jack McDonald: This bill doesn't cover the meeting but state law states right now that is confidential information.

Vice Chairman Larry Klemin: We do have another section of law already that says a public employee's medical information is confidential.

Rep. Gary Paur: We could basically say that these Peer Counselors are under the medical confidentiality.

Rep. Lois Delmore: Seems like there is another questions because we have peers in there These are peers of mine and they want to keep the confidentially there as well.

Jack McDonald: It covers peers counselor, you and everyone.

Chairman Koppelman: Closed the hearing.

2013 HOUSE STANDING COMMITTEE MINUTES

House Judiciary Committee
Prairie Room, State Capitol

SB 2113
JOB 20430
Date March 25, 2013

Conference Committee

Carmen Hecht

Explanation or reason for introduction of bill/resolution:

Relating to confidentiality of emergency responder peer or group counseling session records relating to critical incident stress management.

Minutes:

Chairman Kim Koppelman: Opens SB 2113 for committee action.

Discussion on amendments.

Vice Chairman Larry Klemin: Made a motion for amendment 13.8075.02001.

Rep. Kathy Hogan: Second the motion.

Voice vote carried.

Rep. Randy Boehning: Made a motion for do pass as amended on engrossed SB 2113.

Rep. Lois Delmore: Second the motion.

Vote 14-0-0

Rep. Vicky Steiner: Will carry the bill.

March 25, 2013

VK
3/25/13

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2113

Page 2, line 12, replace "are" with "is"

Page 2, line 12, remove "Without the permission of"

Page 2, remove lines 13 through 31

Renumber accordingly

Date: 3-25-13
Roll Call Vote #: 1

2013 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2113

House Judiciary Committee

Check here for Conference Committee

Legislative Council Amendment Number 13.8075.02001

Action Taken: Do Pass Do Not Pass Amended Adopt Amendment
 Rerefer to Appropriations Reconsider

Motion Made By Rep. Klemin Seconded By Rep. Hogan

Representatives	Yes	No	Representatives	Yes	No
Chairman Kim Koppelman			Rep. Lois Delmore		
Vice Chairman Lawrence Klemin			Rep. Ben Hanson		
Rep. Randy Boehning			Rep. Kathy Hogan		
Rep. Roger Brabandt					
Rep. Karen Karls					
Rep. William Kretschmar					
Rep. Diane Larson					
Rep. Andrew Maragos					
Rep. Gary Paur					
Rep. Vicky Steiner					
Rep. Nathan Toman					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

Voice vote - carried

Date: 3-25-13
 Roll Call Vote #: 1

**2013 HOUSE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. SB 2113**

House Judiciary Committee

Check here for Conference Committee

Legislative Council Amendment Number 13.8075.02001

Action Taken: Do Pass Do Not Pass Amended Adopt Amendment
 Rerefer to Appropriations Reconsider

Motion Made By Rep. Boehning Seconded By Rep. Delmore

Representatives	Yes	No	Representatives	Yes	No
Chairman Kim Koppelman	/		Rep. Lois Delmore	/	
Vice Chairman Lawrence Klemin	/		Rep. Ben Hanson	/	
Rep. Randy Boehning	/		Rep. Kathy Hogan	/	
Rep. Roger Brabandt	/				
Rep. Karen Karls	/				
Rep. William Kretschmar	/				
Rep. Diane Larson	/				
Rep. Andrew Maragos	/				
Rep. Gary Paur	/				
Rep. Vicky Steiner	/				
Rep. Nathan Toman	/				

Total (Yes) 14 No 0

Absent 0

Floor Assignment Rep. Steiner

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

SB 2113, as engrossed: Judiciary Committee (Rep. K. Koppelman, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (14 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed SB 2113 was placed on the Sixth order on the calendar.

Page 2, line 12, replace "are" with "is"

Page 2, line 12, remove "Without the permission of"

Page 2, remove lines 13 through 31

Renumber accordingly

2013 CONFERENCE COMMITTEE

SB 2113

2013 SENATE STANDING COMMITTEE MINUTES

Senate Judiciary Committee
Fort Lincoln Room, State Capitol

SB2113
4/11/2013
Job #21109

Conference Committee

Committee Clerk Signature	
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Minutes:

Attachment

Conference committee on SB2113

Senators - Berry, Armstrong, Grabinger
Representatives - Klemin, Maragos, Hogan

Senator Berry asks the House to explain their amendment. Rep. Klemin gives a handout to the committee. (1) Committee asks Mary Kay Kelsch to speak.

Mary Kay Kelsch - Asst. Attorney General - Her specialty is open records and meetings. She explains the added language and states it is very specific language that deals with emergency management and peer counseling but is being put into a law that applies across the board to everyone. Her concern is that it may be manipulated by entities that did not have peer counseling. She explains they have tried to address this in a very simple fashion and all they need is to make the records exempt.

Representative Maragos makes the motion for the Senate to accede to the House amendments.

Senator Armstrong seconded

Vote - 6 yes, 0 no

Date 4-11-13

Roll Call Vote # 1

**2013 SENATE CONFERENCE COMMITTEE
ROLL CALL VOTES**

BILL/RESOLUTION NO. 2113 as (re) engrossed

Senate Judiciary Committee

- Action Taken**
- SENATE accede to House Amendments
 - SENATE accede to House Amendments and further amend
 - HOUSE recede from House amendments
 - HOUSE recede from House amendments and amend as follows
 - Unable to agree**, recommends that the committee be discharged and a new committee be appointed

Motion Made by: Rep Maragos Seconded by: S Armstrong

Senators	Y	N	Yes	No	Representatives	Y	N	Yes	No
Berry	X		X		Klemin	X		X	
Armstrong	X		X		Maragos	X		X	
Grabinger	X		X		Hogan	X		X	
Total Senate Vote					Total Rep. Vote				

Vote Count Yes: 6 No: 0 Absent: 0

Senate Carrier J. Berry House Carrier Rep. Klemin

LC Number _____ of amendment

LC Number _____ of engrossment

REPORT OF CONFERENCE COMMITTEE

SB 2113, as engrossed: Your conference committee (Sens. Berry, Armstrong, Grabinger and Reps. Klemin, Maragos, Hogan) recommends that the **SENATE ACCEDE** to the House amendments as printed on SJ page 939 and place SB 2113 on the Seventh order.

Engrossed SB 2113 was placed on the Seventh order of business on the calendar.

2013 TESTIMONY

SB 2113

TESTIMONY – SB 2113
SENATE COMMITTEE – JUDICIARY
JANUARY 14, 2013
BY GREG WILZ
DEPUTY DIRECTOR, DEPARTMENT OF EMERGENCY SERVICES

Mr. Chairman and members of the committee, my name is Greg Wilz. I am the Deputy Director of the North Dakota Department of Emergency Services (NDDDES) and Director of the Division of Homeland Security.

There are approximately 15 thousand first responders in North Dakota most of whom are volunteers. The services rendered by these dedicated individuals are critically important to all citizens including business owners and landowners.

It is vitally important to address the long term psychological, emotional, and physical well-being of responders who are experiencing increased calls to duty many of which are very traumatic incidents. During the past year, the Departments of Emergency Services and Health have been cooperating to rebuild the state's Critical Incident Stress Management (CISM) program. It functions to provide pre-incident preparation training and well as individual and small group post-incident counseling sessions to meet the physical and emotional needs of responders who have suffered severe stress, trauma, or illness.

Senate Bill 2113 exempts individual and group counseling session records and privileged information from North Dakota's open record laws similar to protection of medical records. Passage will increase willingness of responders to seek assistance which will help retention rates resulting in preservation of the state's responder base.

I strongly urge your support of SB 2113 and will endeavor to answer all questions. .

January 15, 2013

13.8075.01000
Sixty-third
Legislative Assembly
of North Dakota

PROPOSED AMENDMENTS TO SENATE BILL NO. 2113

Page 2, line 11, replace "Records and privileged information" with Information

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Page 2, line 29, after "agency" insert "in writing. This subsection does not preclude use of information obtained from another source."

Renumber accordingly

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TESTIMONY – SB 2113
HOUSE COMMITTEE – JUDICIARY
MARCH 19, 2013
BY MIKE LYNK
DIRECTOR, DIVISION OF STATE RADIO

Mr. Chairman and members of the committee, my name is Mike Lynk. I am the Director of the Division of State Radio, North Dakota Department of Emergency Services (NDDDES).

There are approximately 15 thousand first responders in North Dakota most of whom are volunteers. The services rendered by these dedicated individuals are critically important to all citizens including business owners and landowners.

It is vitally important to address the long term psychological, emotional, and physical well-being of responders who are experiencing increased calls to duty many of which are very traumatic incidents. During the past year, the Departments of Emergency Services and Health have been cooperating to rebuild the state's Critical Incident Stress Management (CISM) program. It functions to provide pre-incident preparation training and well as individual and small group post-incident counseling sessions to meet the physical and emotional needs of responders who have suffered severe stress, trauma, or illness.

Senate Bill 2113 exempts individual and group counseling session records and privileged information from North Dakota's open record laws similar to protection of medical records. Passage will increase willingness of responders to seek assistance which will help retention rates resulting in preservation of the state's responder base.

I strongly urge your support of SB 2113 and will endeavor to answer all questions. .

Good morning, my name is Dan Sweeney. I serve as the Senior Staff Chaplain for the Bismarck Law Enforcement Chaplaincy which does business as the Crisis Care Chaplaincy. We serve the local first responders in our community and also travel statewide to assist other agencies after traumatic events. I have served in this position since 2002. When I received my first training in chaplaincy for first responders I was introduced to the principles of Critical Incident Stress Management and CIS Debriefing. I have since acquired over 150 hours of professional training in these protocols and am now myself a trainer in Critical Incident Stress Management (CISM). Since being trained I have personally conducted 50 formal debriefings for the ND State CISM team and have done countless individual interventions with first responders. Now after becoming a trainer I have taught over 100 people statewide in CISM.

The ND State CISM Team has been in existence since 1992, after the Sherwood fire in 1991. The ND State CISM team serves under the ND Division of Emergency Medical Services and Trauma and the ND Department of Emergency Management.

Critical Incident Stress Management was pioneered by Dr. Jeffrey Mitchell, who also served as a firefighter, in the early 1980's. He saw a critical need for first responders to have an outlet for the stress that they were experiencing after traumatic calls. His goal was to decrease the incidence of Post Traumatic Stress Disorder in first responders. Since its inception Critical Incident Stress Management has been used by first responders nationwide. It is also recognized by the United Nations and has been used in our military.

Dr. Mitchell and his partner Dr. George Everly have always maintained that CISM is not a form of counseling but a protocol in crisis intervention. It is emotional first aid. They have also maintained that if someone still has symptoms of stress after 30 days that the individual should seek professional counseling. This is stressed in every debriefing and if the agency participates in an employee assistance program we always refer individuals to it.

Critical Incident Stress Management is volunteer driven and peer based. It utilizes mental health professionals, chaplains and first responder peers. Before you can participate in CISM, however, you must have completed at least 24 hours of coursework. The coursework includes both individual and group crisis intervention. The training includes lecture, videos, case studies and role play. In practice a new trainee is often mentored by other trained individuals before they can practice CISM on their own.

The responses we get to this work are marked by how individuals come into a debriefing stressed and leave feeling relieved. In the debriefings I have conducted I have followed up with the supervisor from the agency and regularly hear that their crews are doing better after a team has spent time with them. I personally have gone back to individuals who still have questions and concerns in my follow-up measures. Allow me to share an email that I received just after a debriefing two weeks ago for the National Park Service...

Bismarck Police Chief Dan Donlin expresses his apology for not being here this morning. Chief Donlin has been both the recipient of CISM services after a fatal shootout while serving on a SWAT Team and has received training to be a peer support person. He is very much in favor of this bill. The Bismarck Police Policy Manual requires that CISM debriefings be held for officer involved shootings, SIDS deaths, child

deaths and fatal auto accidents. The Chief says, and I quote that, "The Critical Incident Stress Debriefing is a huge factor in getting first responders emotionally & psychologically through very tragic critical incidents."

One of the biggest issues, if I understand correctly, of this committee is whether a CIS Debriefing should be considered confidential. I have a listing here of 22 states that have passed laws stating that a CISM debriefing when done by trained personnel is confidential. The US Coast Guard has a very strict confidentiality policy as does the United Nations. Confidentiality is sacred to first responders as they do not share with the public the calls that they respond to. Confidentiality is critical to the success of a CIS Debriefing so that first responders may clear their emotions properly and get the help that is offered in doing this work of crisis intervention.

Superintendent Ross, in my follow-up with her stated that, "People need to feel safe when sharing their innermost thoughts and emotions in a debriefing setting."

I also support ~~for~~ SB 2113 for Passages.

I have kept my remarks brief and am willing to answer questions regarding Critical Incident Stress Management and confidentiality.

Dan Sweeney

3-19-13

3

**CISM Legislation
(By State)**

(3/9/13)

Arizona

State Legislation

**38-1108 Critical incident stress management team member;
privilege; exceptions;**

Delaware

State Legislation

146th General Assembly

Senate Bill # 174 w/SA 1 + HA 2

Long Title: AN ACT TO AMEND TITLE 10, CHAPTER 43 OF THE DELAWARE CODE AS IT RELATES TO EVIDENCE AND WITNESSES.

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;

Florida

State Legislation

**The 2010 Florida Statutes(including Special Session A)
Title XXIX
PUBLIC HEALTH
Chapter 401
MEDICAL TELECOMMUNICATIONS AND
TRANSPORTATION
401.30 Records.—**

(e) For use in a critical incident stress debriefing. Any such discussions during a critical incident stress debriefing shall be considered privileged communication under s. 90.503;

Georgia

State Legislation

**Georgia
08 HB 89/AP
House Bill 89 (AS PASSED HOUSE AND SENATE)
SECTION 8.**

**Title 51 of the Official Code of Georgia Annotated, relating to torts, is amended by revising Code Section 51-1-29.2 as follows:
"51-1-29.2.**

Georgia Enacts Corporate Good Samaritan Act

May 19, 2008

The Governor of Georgia has signed into law a bill that has been informally named the "Corporate Good Samaritan Act." This bill gives businesses and non-profit organizations additional liability protection when performing "Good Samaritan" acts in a time of emergency or crisis.

Georgia

State Legislation

Hawaii Revised Statutes [§78-52] Peer support counseling; sessions.

"Peer support counseling sessions" includes critical incident stress management sessions.

(b) 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 not be disclosed by any person participating in the peer support counseling session.**

(c) Any communication relating to a peer support counseling session made privileged under subsection (b), that is made between counselors, between counselors and the supervisors or staff of an employee assistance program, or between the supervisors or staff of an employee assistance program, **is privileged and may not be disclosed.**

Kentucky

State Legislation

KCCRB Confidentiality Privilege

***56771 ICE Rule 506**

BALDWIN'S KENTUCKY REVISED STATUTES

ANNOTATED

KENTUCKY RULES OF EVIDENCE

ARTICLE V. PRIVILEGES

Current with amendments received through 4/30/2000

KRE 506 COUNSELOR-CLIENT PRIVILEGE

(f) An individual who provides crisis response services as a member of the community crisis response team or local community crisis response team pursuant to KRS 36.250 to 36.270;

(3) A communication is "confidential" if it is not intended to be disclosed to third persons, except persons present to further the interest of the client in the consultation or interview, persons reasonably necessary for the transmission of

the communication, or persons present during the communication at the direction of the counselor, including members of the client's family.

(b) **General rule of privilege.** A client has a privilege to refuse to disclose and to prevent any other person from disclosing confidential communications made for the purpose of counseling the client, between himself, his counselor, and persons present at the direction of the counselor, including members of the client's family.

Louisiana

CE 518

**CE 518 Trained peer support member privilege
Louisiana Code of Evidence (Refs & Annos)
Chapter 5. Testimonial Privileges (Refs & Annos)
Art. 518. Trained peer support member privilege**

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.

The privilege only applies when the communication was made to the trained peer support member.

Maine

§4202

**Maine Revised Statutes
§4201
Title 25: INTERNAL SECURITY AND PUBLIC SAFETY
Part 11: CRITICAL INCIDENTS
Chapter 501: CRITICAL INCIDENT STRESS MANAGEMENT
TEAMS
§4202. Critical incident stress management teams**

Information confidential. Except as provided in subsection 2, 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.**

Minnesota

State Legislation

Minnesota Department of Corrections
Policy: 103.090 Title: Critical Incident Stress Management
Issue Date: 1/6/09
Effective Date: 2/3/09

AUTHORITY: Minn. Stat. §241.01.

PURPOSE: To provide a confidential service within the department that will utilize trained peer support staff to assist employees in managing stress reactions to work related critical incidents.

APPLICABILITY: All department employees. Non-department staff may also anticipate if such staff have been directly involved in a critical incident that has involved department staff.

POLICY: The department will provide a Critical Incident Stress Management (CISM) program to mitigate the stress impacts resulting from a critical incident.

To maintain confidentiality, The CISM team member will only inform the watch commander whether or not a debriefing will occur.

Mississippi

State Legislation

Annotated Mississippi Code Currentness
Title 13. Evidence, Process and Juries
Chapter 1. Evidence (Refs & Annos)
In General (Refs & Annos)
§ 13-1-22.1. Certified peer support

(2) 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.

Montana

State Capitol

HB0517

AN ACT ESTABLISHING THE CRITICAL INCIDENT STRESS MANAGEMENT ACT; REQUIRING THAT CRITICAL INCIDENT MEETINGS BE CLOSED TO THE PUBLIC AND OTHERS; **REQUIRING THAT CERTAIN INFORMATION PROVIDED DURING CRITICAL INCIDENT STRESS MANAGEMENT AND RESPONSE BE KEPT CONFIDENTIAL**; PROVIDING DEFINITIONS; PROVIDING EXCEPTIONS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Section 5. Critical incident meetings closed -- confidentiality -- exceptions.

(1) To protect the privacy rights of an emergency service provider in receiving critical incident stress management and response services, critical incident stress management debriefing meetings and other critical incident stress management and response services meetings are closed to the general public and may be closed to anyone who was not directly involved in the critical incident that is the subject of the meeting.

(2) Any information divulged to the team 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, unless the merits of disclosure exceed the demands of an individual's privacy. 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.

Nebraska

State Legislation

§ 71-7112. Confidentiality of information.

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. Information otherwise available from the original source shall not be immune from discovery or use in any

New Mexico

State Legislation

West's New Mexico Statutes Annotated Currentness
Chapter 24. Health and Safety
Article 10B. Emergency Medical Services

J. Operation of a critical incident stress management program for emergency providers utilizing specifically trained volunteers who **shall be considered public employees for the purposes of the Tort Claims Act when called upon to perform their duties;**

Ohio

State Legislation

OHIO
(126th General Assembly)
(Substitute Senate Bill Number 19)
AN ACT

To amend sections 2317.02 and 4117.14 of the Revised Code to make the testimonial privilege against disclosure of certain communications applicable to critical incident stress management (CISM) team members, to create a testimonial privilege between employee-assistance program personnel and program clients, and to reenact the provision of law designating the Controlling Board as the legislative body authorized to reject recommendations of a fact-finding panel.

Be it enacted by the General Assembly of the State of Ohio:

SECTION 1. That sections 2317.02 and 4117.14 of the Revised Code be amended to read as follows:

Sec. 2317.02. The following persons shall not testify in certain respects:

Oklahoma

Statutes

Oklahoma Statutes Annotated Currentness
Title 12. Civil Procedure (Refs & Annos)
Chapter 40. Evidence Code (Refs & Annos)
Article V. Privileges

§ 2506.2. Peer support counseling confidentiality

B. 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.

C. Any communication relating to a peer support counseling session made confidential under subsection B of this section that is made between counselors, between counselors and the supervisors or staff of an employee assistance program, or between the supervisors or staff of an employee assistance program, is confidential and may not be disclosed.

Pennsylvania

State Legislation

H 1332

In bill text the following has special meaning
underline denotes added text
struck out text denotes deleted text

Session of 2010

Act No. 2010-53

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL No. 1332

AN ACT

Amending Title 42 (Judiciary and Judicial Procedure) of the Pennsylvania Consolidated Statutes, **providing for confidential communications to a critical incident stress management team member by law enforcement officers, public safety responders and corrections officers and for confidential communications to a peer support member by law enforcement officers.**

Tennessee

State Legislation

Public Chapter No. 332 PUBLIC ACTS, 2009 1

**STATE OF TENNESSEE
PUBLIC CHAPTER NO. 332
SENATE BILL NO. 523**

**AN ACT to amend Tennessee Code Annotated, Title 24,
Chapter 1, Part 2, relative to
privileged communications.**

**BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE
STATE OF TENNESSEE:**

(b) All communications between a critical incident stress management team member or team leader providing, and a group participant or person participating in, a crisis intervention shall be considered confidential and no such person shall be required to disclose any such communication unless otherwise required by law or rule of court.

Tennessee

State Bar of Tennessee

TEXAS

**Chapter 784. Critical Incident Stress
Management and Crisis Response Services
Health and Safety Code Sections 784.001–
784.004
Section 784.001:**

Section 784.003:

Confidentiality

(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 may not be

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.

Virginia

State Legislation

CHAPTER 148

An Act to amend the Code of Virginia by adding in Article 1 of Chapter 16 of Title 19.2 a section numbered 19.2-271.4, relating to critical incident stress management teams; privileged communications by certain emergency medical services and public safety personnel.

[H 856]

Approved March 7, 2012

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Article 1 of Chapter 16 of Title 19.2 a section numbered 19.2-271.4 as follows:

§ 19.2-271.4. Privileged communications by certain public safety personnel.

A. A person who is a member of a critical incident stress management team, established pursuant to subdivision A 13 of § 32.1-111.3, 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 (§ 2.2-3700 et seq.).

Washington

Revised Code

RCW 5.60.060

Who are disqualified – Privileged communications.

*** CHANGE IN 2009 *** (SEE 5931-S.SL) ***

(6)(a) A peer support group counselor shall not, without consent of the law enforcement officer or firefighter making the communication, be compelled to testify about any communication made to the counselor by the officer or firefighter while receiving counseling. The counselor must be designated as such by the sheriff, police chief, fire chief, or chief of the Washington state patrol, prior to the incident that results in counseling. The privilege only applies when the communication was made to the counselor while acting in his or her capacity as a peer support group counselor. The privilege does not apply if the counselor was an initial responding officer or firefighter, a witness, or a party to the incident which prompted the delivery of peer support group counseling services to the law enforcement officer or firefighter.

(b) For purposes of this section, "peer support group counselor" means a:

(i) Law enforcement officer, firefighter, civilian employee of a law enforcement agency, or civilian employee of a fire department, who has received training to provide emotional and moral support and counseling to an officer or firefighter who needs those services as a result of an incident in which the officer or firefighter was involved while acting in his or her official capacity; or

(ii) Nonemployee counselor who has been designated by the

sheriff, police chief, fire chief, or chief of the Washington state patrol to provide emotional and moral support and counseling to an officer or firefighter who needs those services as a result of an incident in which the officer or firefighter was involved while acting in his or her official

Dan Sweeney

From: Ross, Wendy <wendy_ross@nps.gov>
Sent: Monday, March 11, 2013 5:13 PM
To: dsweeney@nd.gov
Subject: Thank you from Knife River Indian Villages

Hi Dan-

I just wanted you to know how much I appreciated your team coming to Beulah to work with the combined ND parks last Thursday. I know things were rather chaotic, but you and your team handled things so professionally and put our minds at ease. I have gotten so many phone calls and comments about how the session really helped people feel better about the whole incident. I can't even begin to tell you how much your willingness to drop everything on Friday to spend the day at the park meant to me and the staff. I feel confident that three people were able to sleep much better after talking to you one-on-one. You have an amazing gift and I want you to know that you are appreciated. We are doing as well as can be expected and are moving into a new normal. Sadness is underlying some things, but there are moments of laughter too. That has to be the healing beginning.

Take Care,
Wendy

--
Wendy Hart Ross
Superintendent
Knife River Indian Villages National Historic Site
PO Box 9
Stanton, ND 58571
701.745.3300

*IN SPEAKING WITH WENDY ABOUT THE CONFIDENTIALITY
OF CISM SHE STATED "PEOPLE NEED TO FEEL SAFE
WHEN THEY ARE ~~IN~~ SHARING THEIR EMOTIONS."*

5

Tuesday, March 19, 2013

HOUSE JUDICIARY COMMITTEE
SB 2113

CHAIRMAN KOPPLEMAN –K AND COMMITTEE MEMBERS:

My name is Jack McDonald. I appear today on behalf of the North Dakota Newspaper Association and the North Dakota Broadcasters Association. We oppose the closed records provisions of this bill and ask that you amend them.

The wording of lines 11 through 31 on page 2 of the bill is vague and indeterminate. Our organizations have never opposed closing certain records or meetings if a specific problem is cited and the proposed solution precisely identifies those problems and solves them. HB 2113 does not do this.

Instead it creates vague categories of "information" – what kind of information we don't know, but trust us - and "persons" – we don't know who these are, but trust us – and says these are exempt and closed to the public.

Frankly this information is probably already exempt as personal medical information. Why not just say that instead of creating all these new, vague categories?

Therefore, we respectfully request the committee to consider the amendments below. If you have any questions, I will be happy to try to answer them.

THANK YOU FOR YOUR TIME AND CONSIDERATION.

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL 2113

Page 2, line 11, remove "Information" and insert "Medical information"

Page 2, line 12, delete the remainder of the line after "debriefing" and insert "is exempt."

Page 2, remove lines 13 through 31.

Renumber accordingly

SB: 2113

Proposes to make "information relating directly to persons engaged in an organized public safety peer counseling or a public safety peer debriefing exempt."

- This bill addresses a non-issue.
- Peer counseling and debriefing are not subject to open meetings. The media can't insist that they be present for counseling or debriefing.
- Only records that are created during peer counseling or debriefing would be vulnerable to open records. No requirement to write anything down.
- The fear is that peer counseling and debriefing records would be open records because they aren't medical records. Solution is to just say that such records are exempt. After lines 12 on page 2, the language is unnecessary and confusing. Leaving lines 11 & 12 on page 2 in would be sufficient.
- Another solution would be to define peer counseling and debriefing as "medical information" and therefore exempt.
- Danger in leaving it as it is – it is in the general OR part of the law and could be manipulated by any public entity.

SB: 2115

- Makes changes to 44-04-18.4.
- The initial draft allowed private entities to determine whether records were technical, financial, or marketing records simply by declaring it in writing. This was amended because it is the public entity that gets to decide what records meet our OR law requirements.
- Now, amendments have been offered to put the bill back to its original form.