

BILL ANALYSIS

C.S.H.B. 2040
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Homeland Security & Public Safety
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Critical incident stress management and crisis response services are phrases 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.

Emergency service providers, commonly referred to as first responders, are primarily firefighters, law enforcement personnel, medical personnel, and rescue service providers. When responding to calls of duty, these individuals often encounter horrific scenes of destruction, hate, violence, death, and trauma that may have a deep and lasting impact on their own well-being. Where available, a critical incident stress management team is typically called to the scene of a critical incident to provide counseling and stress management services to first responders. It is important to the counseling process that a first responder be able to speak freely and without constraint to a critical incident stress management team member. Therefore, it is imperative to make these conversations confidential for the protection of first responders.

C.S.H.B. 2040 seeks to provide for the confidentiality of certain communications of and records kept by critical incident stress management team members and to provide certain civil liability immunities for those individuals.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 2040 amends the Health and Safety Code to establish that a meeting in which critical incident stress management services or crisis response services are provided to an emergency service provider is closed to the general public and may be closed to any individual who was not directly involved in the critical incident or crisis, unless 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 the emergency service provider is deceased.

C.S.H.B. 2040 establishes that 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 prohibited from being disclosed in a civil, criminal, or administrative proceeding. The bill establishes that 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 not subject to subpoena, discovery, or introduction into evidence in a civil, criminal, or administrative proceeding. The bill authorizes a court in a civil or criminal case or the decision-making entity in an administrative proceeding to allow the disclosure of such a confidential communication or record 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.S.H.B. 2040 establishes that a communication or record is not confidential if 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; or the emergency service provider is deceased. The bill establishes that a communication or record 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.

C.S.H.B. 2040 exempts an emergency response team or an emergency response team member providing critical incident stress management services or crisis response services from liability 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. The bill establishes that such exemption limits liability for damages in any civil action, other than an action under statutory provisions related to medical tort liability.

C.S.H.B. 2040 defines "crisis response service," "critical incident stress," "critical incident stress management service," "emergency response team member," and "emergency service provider."

EFFECTIVE DATE

September 1, 2011.

COMPARISON OF ORIGINAL AND SUBSTITUTE

C.S.H.B. 2040 differs from the original by establishing that the exemption of an emergency response team or an emergency response team member providing critical incident stress management services or crisis response services from liability for certain damages limits liability for damages in any civil action other than an action under statutory provisions related to medical tort liability, whereas the original establishes that the exemption limits liability for damages in any civil action, including a claim for damages arising from injury to physical or mental health. The substitute contains a provision not included in the original making a conforming change.