

**Citizen Corps/Community Emergency Response Team (CERT)  
Liability  
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“We are really teaching the volunteers life skills with the exception of maybe search patterns and building damage. The rest of the skills they can use day-to-day in their normal lives. As long as they operate within the scope of the training, liability should not be an issue.” Frank Lucier – retired from the San Francisco Fire Department. He developed and was the former Director of the City’s innovative and internationally recognized Neighborhood Emergency Response Team system.

**Proactive steps to take to manage liability concerns for your program.**

1. Determine what type of program will work best for your jurisdiction
  - a. Activate Only
  - b. Self-Activated
  - c. Educational & training opportunity
  - d. A Combination
2. Do your research
3. Reducing Liability (This section is also available at [http://training.fema.gov/EMIWeb/CERT/new\\_CERT/t3-4.htm](http://training.fema.gov/EMIWeb/CERT/new_CERT/t3-4.htm))
  - a. During training-Instructors
  - b. During training-Students
  - c. During training-Classroom/Exercise Area
  - d. During training-Materials
  - e. During Exercises
  - f. During Team Activation
4. Training/Scope of Training
5. First Responders
6. Review South Dakota Legislation
7. Hazard Mitigation and Span of Control

1. Determine what type of program will work best for your jurisdiction

- a. Activate Only-This type of team responds to any type of emergency/disaster when requested from a predetermined governing body. The governing entity of the team would assume liability once they have called and activated their CERT team. If the governing body is a governmental entity, the SDCL 62-1-5.1 (see Attachment A) states all volunteers are automatically covered for governmental entities as long as they are listed in the minutes of their meeting. For example a CERT Roster of Active Team members is approved and read into the County Commissioner's meeting minutes, prior to activation.
- b. Self-Activated Team-In this type of team, individuals will respond on their own. They are not activated to respond. These responding individuals would assume their own liability and would not qualify under the definition of a covered volunteer. (see a. Activate Only for a covered volunteer) (see Attachment A SDCL 20-9-4.1, Good Samaritan Volunteer)
- c. Educational & Training Opportunities-Provide education to citizens. Individuals may want to know what to do and what they can do in the event they need to take care of themselves. Citizens may not want to be on an activated team or self activate. Rather they want the information and training. For example, how to put out a kitchen fire, or if their children fall and break their arm, they would then have the basic knowledge and training to know what to do until first responders can arrive.
- d. Combination-Some jurisdictions have a combination of Activated, Self-Activated, and educational programs. Once again this goes back to what is determined best for each individual jurisdiction. The governing authority would need to determine what authority will be given to the volunteer and realize those who self-activate would be assuming their own liability and work comp coverage.

2. Do your research

- a. Consult your jurisdiction's legal counsel. They are the 'experts' in this area.
  - i. Consider obtaining a release from liability, a Hold Harmless and/or similar instruments if local legal counsel deems it necessary. Many CERT programs have all students sign this type of agreement before starting training. (See Sample 1 & Sample 2)
- b. Conduct internet research. Some websites to consider are:
  - i. [www.nonprofitrisk.org](http://www.nonprofitrisk.org)
  - ii. [www.citizencorps.gov/councils](http://www.citizencorps.gov/councils)
  - iii. [http://training.fema.gov/EMIWeb/CERT/new\\_CERT/index.htm](http://training.fema.gov/EMIWeb/CERT/new_CERT/index.htm)
  - iv. <http://www.eriskcenter.org>
  - v. The Federal Volunteer Protection Act of 1997  
<http://www.npaction.org/article/articleprint/420/-1/153/>
- c. Talk with other program managers to discuss how they addressed the liability issue.

3. Reducing Liability

a. During training-Instructors

Steps that you can take with your instructors to help reduce liability include:

- Establishing training standards and safety requirements for training.
- Briefing all instructors on their responsibilities to conduct safe and effective training.
- Ensuring that all instructors are prepared to meet the objectives for their sessions.

- Providing co-instructors to assist the instructors for all activities.
  - Ensuring that all instructors model appropriate safety behavior, such as safety gear for all demonstrations.
  - NOTE: Be sure that your instructors understand that they can give students permission to opt out of an activity if they have a condition that they may aggravate by participating.
  - Provide a Safety Officer during hands-on training.
- b. During training-Students  
Steps that you can take with CERT students to help reduce liability include:
- Ensure that students understand that they may opt out of activities if they have a condition that they may aggravate by participating. (Know their limitations and remember personal safety is always first priority)
  - Require all students to sign a hold harmless agreement.
  - Explain the potential hazards that students may face in class activities, during exercises, and during activation (depending on program type).
  - Provide copies of all CERT safety rules and requirements to each student. Require them to sign one copy and return it to you before class begins. Encourage the students to keep the other copy for their records.
  - Require all students to wear safety gear for all activities.
  - When you see an unsafe act, correct it immediately.
  - If someone is injured during class, document the injury and ensure that the student receives appropriate medical treatment.
  - Emphasize that rescuer safety is the primary concern in training and activation.
- c. During training-Classroom/Exercise Area  
Steps that you can take to ensure that the CERT classroom and exercise area are safe include:
- Walk through the classroom and exercise area(s) before each class to identify and correct unsafe conditions.
  - Check all to ensure that it is in good working order.
  - NOTE: This is something that should be done before every class begins.
  - Consider assigning a Safety Officer
- d. During training-Materials  
The main step to take to reduce liability related to the CERT materials is to ensure that you have written releases for all copyrighted materials (including photographs and cartoons). (Note that if you are using FEMA's materials without alteration, all necessary copy right releases have been secured.) Remember that photographs and other materials found on the Internet are copyrighted. Also look to the Citizen Corps Council website to obtain permission to use the Citizen Corps Logo, Mark, and/or banners.
- e. During Exercises  
Always take the measures below to reduce liability during exercises:
- Conduct a pre-exercise briefing in which you provide the objectives (including safety objectives) for the exercise.

- Treat all drills, functional exercises, and full-scale exercises as the real thing. Enforce all safety rules strictly.
- Stress teamwork, safety equipment, and the use of the buddy system.
- If you see an unsafe act, intervene immediately!
- Conduct a post-exercise debriefing, and cover safety issues as part of the debriefing.
- Stress the need to document everything using the forms approved by the jurisdiction.
- If someone is injured, document the injury, and ensure that the volunteer receives appropriate medical care.
- Consider assigning a Safety Officer

f. During Team Activation

Take the measures below to reduce liability during team activation:

- Educate your departments about the CERT program, the level of training provided, and how to access and use CERT members during an emergency or disaster.
- Require that all team activations are in accordance with established CERT protocols.
- Require team leaders to verify that all CERT members have the necessary tools and equipment, including safety gear, for the response.
- Require a good size-up and communication of size-up information to first responders as soon as possible after arrival at the scene.
- Require complete documentation of team assignments, actions taken, results, and communications with first response agency personnel.
- Stress that CERT members should respond in accordance with the scope of their training. Being a CERT member does not provide rights or privileges beyond being a CERT volunteer.
- If a CERT member is injured during activations, ensure that the injury is documented and that the volunteer receives appropriate medical treatment.

For these measures to work as intended, you will need to take action before activation and reinforce the measure during team exercises.

4. Training/Scope of Training-Provide sufficient training for volunteers. This may mean providing additional or supplemental training sessions to ensure all volunteers understand and are able to perform specific tasks involved with CERT training. Depending on how the individual jurisdiction sets up their CERT team, some programs may require additional or supplemental training in order to be considered a CERT member. For example, a jurisdiction may require participants be certified in CPR and keep this current in order to be a member of the CERT team.

Be sure citizens understand the **scope** of their training. Those volunteers should respond in accordance with their training as a CERT member. The scope of the training should be stressed throughout the entire program emphasizing what the volunteers are trained to do and able to do. A CERT volunteer, having completed the CERT training in accordance with the CERT training standards, should not respond outside the scope of this training. In the

event they do, they would not be responding as a CERT member and thus fall outside the set standards for the individual CERT liability. The key to liability is reinforcing to the volunteers to only respond within the scope of their training.

5. First Responders. Solicit and address liability concerns raised by first responders. It is important to obtain the support of the first responders for this program. Discuss the possible areas where CERT members can be of assistance and support to the First Responders. How can the CERT team be an asset in the event of a disaster or emergency? Jointly engage citizen volunteers and first responders in mock scenarios or table top exercises. This not only helps those volunteers get a better understanding of what is expected, but the first responders also know what the CERT team can and cannot do.
6. Review South Dakota Legislation—See Attachment A  
SDCL 20-9-4.1, Good Samaritan Volunteer  
SDCL 62-1-5.1, Volunteers serving state or political subdivision without pay—Computing or imputing wage—Certain persons not deemed volunteers
7. Hazard Mitigation and Span of Control  
For the CERT training, make sure to do hazard mitigation at the training site. Remove or fix any potential hazards that could injure the participants. Also look at the span of control for your training. Just as in ICS, there should be 1 instructor or safety person for every 7 or less participants. This helps insure safety, participants are learning and understanding the training, and can apply it.

### Conclusion

Set training standards. CERT participants must clearly know the scope of their training and when they should apply this training. Consider addressing the need for refreshment of training.

Stress that CERT members should respond in accordance with their training. Being a CERT member does not provide rights or privileges beyond being a CERT volunteer. **Scope of training** is the parameter in which the volunteers should be responding.

Inform CERT members of their rights, protection, and limitations as a volunteer.

A Hold Harmless/permission requests/release forms can reduce your CERT program's liability. Have your participants sign this type of agreement **BEFORE** starting training.

*MEMO: The information in this document is only suggestions and ideas on ways to manage liability concerns and in no way is a complete list of ways to manage liability. Not all suggestions and ideas pertain to each program, but should be used for informational purposes.*

## Attachment A

### S. D. Codified Law 20-9-4.1, Good Samaritan Volunteer

General immunity from liability for emergency care—Exceptions.

No peace officer, conservation officer, member of any fire department, police department and their first aid, rescue or emergency squad, or any citizen acting as such a volunteer, or any other person liable for any civil damages as a result of their acts of commission or omission arising out of and in the course of their rendering in good faith, any emergency care and services during an emergency which is in their judgment indicated and necessary at the time. Such relief from liability for civil damages shall extend to the operation of any motor vehicle in connection with any such care or services.

Nothing in this section grants any such relief to any person causing any damage by his willful, wanton or reckless act of commission or omission.

Source: SL 1968, ch 193; SL 1970, ch 140; SL 1986, ch 4, § 9.

### S. D. Codified Law 62-1-5.1. Volunteers serving state or political subdivision without pay--Computing or imputing wage--Certain persons not deemed volunteers.

Volunteers serving state or political subdivision without pay--Computing or imputing wage--Certain persons not deemed volunteers. Any volunteer worker rendering services in or for any agency, department, institution, or instrumentality of the state or of any of its political subdivisions, including counties, townships, school districts, or municipalities, whose services have been duly recommended to the officer or governing body responsible for employment of personnel for the respective entity and duly appointed thereto by such officers or governing body, shall for purposes of this title be deemed an employee of the state or the political subdivision, as the case may be. The appointment shall be entered into the official records or minutes of the entity.

In the event of injury or death, for the purposes of computing compensation for volunteer workers other than volunteer firefighters, a volunteer uncompensated worker's employment earnings from all sources during the last six months of employment shall be used. In the event the volunteer uncompensated worker has never been employed, the worker shall be considered to be earning the state minimum wage over a forty-hour week. The worker's average weekly wage shall be calculated by one of the methods in §§ 62-4-25 to 62-4-27, inclusive. In no event may payments to volunteer uncompensated workers exceed the maximum limitations for benefits as set out in this title. No local prisoner, state inmate, or federal inmate providing services to the state or any of its political subdivisions may be considered a volunteer worker under this section.

Source: SL 1971, ch 278, § 1; SL 2001, ch 292, § 1.

Sample 1

**[COMMUNITY NAME]  
COMMUNITY EMERGENCY RESPONSE TEAM PROGRAM  
HOLD HARMLESS/PERMISSION REQUEST**

I, \_\_\_\_\_, hereby request permission to participate in the \_\_\_\_\_ Community Emergency Response Team (CERT) program. I understand that this training will involve active physical participation, which includes a potential risk of personal injury and/or personal property damage. I make this request with full knowledge of the possibility of personal injury and/or personal property damage. Further, I have read and understand the program outline that describes all class sections and the associated activities.

I agree to hold The American Red Cross, the \_\_\_\_\_, \_\_\_\_\_ Fire Department, [COMMUNITY NAME] and [COMMUNITY NAME] Emergency Management, and their agents and personnel, harmless from any and all claims, actions, suits, and/or injury that I may suffer and which may arise as a result of my participation in the above mentioned class.

I agree to follow the rules established by the instructors, and to exercise reasonable care while participating in the CERT program. I understand that if I fail to follow the instructor's rules and regulations or if I fail to exercise reasonable care, I can be administratively removed from the program.

By executing this release I certify that I have read this release in its entirety, understand all of its terms and have had any questions regarding the release or its effect satisfactory answered. I sign this release freely and voluntarily.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Emergency Contact Name

\_\_\_\_\_  
Emergency Contact Number

Comments:

\_\_\_\_\_  
Signature of Instructor

\_\_\_\_\_  
Date

## Sample 2

### Brookings County Community Emergency Response Team/Training Program (CERT)

#### Release

By signing this Release, I acknowledge that I have read and understand the risks associated with this activity. (**Warning:** Individuals who do not wish to accept the risks described in this document, should not sign it). The undersigned participant in the Community Emergency Response Team/Training Program acknowledges and agrees as follows:

#### Acknowledgment of Risk

Participation in the Community Emergency Response Team/Training (CERT) Program involves physical labor and carries a risk of personal injury. I recognize that there are natural and manmade hazards, environmental conditions, diseases, and other risks, which in combinations with my actions can cause injury to me. I recognize that activities associated with this program may include transportation to and from volunteer sites, extinguishing small fires, providing disaster medical care (e.g., controlling bleeding, treating shock, treating sprains and fractures, opening airways, transporting patients), performing light search and rescue activities and other similar activities.

#### Physical Activity

I understand that the physical activity involved in this program may cause physical and emotional discomfort. I am free from any known heart disease or other serious health problems that could prevent me from participating in any of the activities associated with this program. I am sufficiently physically fit to participate in the activities of the program.

#### Immunity

I recognize that the activities associated with this program fall within the general immunity from liability for emergency care pursuant to SDCL 20-9-4.1. I certify that I have medical insurance to cover the cost of any emergency or other medical care that I may receive for an illness or injury. If I do not have medical insurance, I will be personally responsible for the cost of any emergency or other medical care that I receive.

#### Release and Indemnification

I hereby assume all risk of injury or liability and waive any right of recovery from, or to bring suit against Brookings County and any other public or private entity involved with the Community Emergency Response Team/Training, together with all of their employees or agents, for any bodily injury, death, or other consequences arising out of my participation in this activity. I agree to indemnify, defend, and hold harmless the above listed entities and their agents or employees from all loss, costs, damage, injury, liability, claims, and causes of action whatsoever, arising out of or related to any act, error, or omission while participating in any aspect of this activity.

**I HAVE READ THE ABOVE RELEASE AND CONSENT TO ITS PROVISIONS.**

\_\_\_\_\_  
Signature of Participant

\_\_\_\_\_  
Date

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Date