

HOUSE BILL No. 2025

AN ACT concerning public safety; relating to peer support counseling sessions for emergency services personnel and law enforcement personnel; the Kansas law enforcement training act; amending K.S.A. 22-2202 and K.S.A. 2014 Supp. 74-5616 and 74-5622 and repealing the existing sections.

*Be it enacted by the Legislature of the State of Kansas:*

Section 1. K.S.A. 2014 Supp. 74-5616 is hereby amended to read as follows: 74-5616. (a) No person shall be appointed as a full-time law enforcement officer unless the person holds a full-time active law enforcement certificate or a provisional law enforcement certificate. No person shall be appointed as a part-time officer unless the person holds a full-time active law enforcement certificate, a part-time active law enforcement certificate or a provisional certificate.

(b) The commission may suspend, condition or revoke the certification of a police officer or law enforcement officer, reprimand or censure a police officer or law enforcement officer, or deny the certification of a police officer or law enforcement officer who:

(1) Fails to meet and maintain the requirements of K.S.A. 74-5605 or 74-5607a, and amendments thereto;

(2) has knowingly submitted false or misleading documents or willfully failed to obtain any certification under the Kansas law enforcement training act;

(3) provides false information or otherwise fails to cooperate in a commission investigation to determine a person's continued suitability for law enforcement certification;

(4) fails to complete the annual continuing education required by K.S.A. 74-5607a, and amendments thereto, and implementing rules and regulations or otherwise fails to comply with the requirements of the Kansas law enforcement training act;

(5) engaged in conduct which, if charged as a crime, would constitute a felony crime under the laws of this state, a misdemeanor crime of domestic violence as defined in the Kansas law enforcement training act at the time the conduct occurred or a misdemeanor crime that the commission determines reflects on the honesty, trustworthiness, integrity or competence of the applicant as defined by rules and regulations of the commission;

(6) has used racial or other biased-based policing prohibited by K.S.A. 2014 Supp. 22-4609, and amendments thereto; or

(7) has engaged in unprofessional conduct as defined by rules and regulations of the commission.

(c) The procedure for the censure or reprimand of a police officer or law enforcement officer, or ordering a condition, suspension, revocation or denial of certification of a person as a police officer or law enforcement officer or an applicant for certification, shall be in accordance with the Kansas administrative procedure act.

(d) The commission may commence an emergency proceeding under the Kansas administrative procedure act to suspend the certification of any police officer or law enforcement officer who engages in conduct constituting grounds for discipline in this section and whose continued performance of duties constitutes an immediate danger to the public.

(e) Any action of the commission pursuant to this section is subject to review in accordance with the Kansas judicial review act. Upon request of the commission, the attorney general shall prosecute or defend any action for review on behalf of the state, but the county or district attorney of the county where the police or law enforcement officer has been employed as such shall appear and prosecute or defend such action upon request of the attorney general or commission. The commission may elect to retain the services of a private attorney to appear and prosecute or defend any action on behalf of the commission.

(f) *The agency head or other appointing authority for a police officer or law enforcement officer under investigation for a violation of this section shall provide all reports, documentation, transcripts, recordings and other information to the commission when requested during the course of such investigation.*

Sec. 2. K.S.A. 2014 Supp. 74-5622 is hereby amended to read as follows: 74-5622. (a) Certification by the commission will remain active for a period of five years after leaving employment as a law enforcement officer. Certification which has lapsed due to more than five years since

employment as a law enforcement officer may be reinstated if the applicant, within one year of reappointment:

(1) Satisfactorily completes the current basic training required under K.S.A. 74-5607a, and amendments thereto;

(2) passes a written competency test and firearms proficiency qualification course developed and administered by the Kansas law enforcement training center; or

(3) obtains from the commission pursuant to ~~subsection (b) of~~ K.S.A. 74-5608a(b), and amendments thereto, a waiver based on the training, experience and circumstances of the applicant.

(b) (1) A person whose certificate issued under the Kansas law enforcement training act has been ~~suspended or~~ revoked may petition the commission to reinstate the certificate *after the expiration of five years from the effective date of such revocation. If the commission denies a petition for reinstatement, such person may petition the commission to reinstate the certificate after the expiration of five years from such denial.*

(2) The commission may reinstate a ~~suspended or~~ revoked certificate upon a finding that the petitioner is otherwise qualified for certification under the Kansas law enforcement training act and is sufficiently rehabilitated to warrant the public trust. The burden shall be upon the petitioner to establish rehabilitation by clear and convincing evidence.

(3) In determining whether a petitioner is sufficiently rehabilitated to warrant the public trust, the commission may consider any relevant evidence, and may, but shall not be required, to consider the following factors:

~~(1)~~(A) The present moral fitness of the petitioner for performance of duties as a police officer or law enforcement officer;

~~(2)~~(B) the demonstrated consciousness of the wrongful conduct and disrepute which the conduct has brought upon the law enforcement profession and the administration of justice;

~~(3)~~(C) the extent of the petitioner's rehabilitation;

~~(4)~~(D) the nature and seriousness of the original misconduct;

~~(5)~~(E) the conduct subsequent to discipline;

~~(6)~~(F) the time elapsed since the original discipline; and

~~(7)~~(G) the petitioner's character, maturity and experience at the time of the original revocation.

(4) *The proceedings on a petition for reinstatement shall be conducted in accordance with the Kansas administrative procedure act.*

New Sec. 3. (a) For the purposes of this section:

(1) "Emergency services personnel" means any employee or volunteer of an emergency services provider who is engaged in providing or supporting firefighting, dispatching services and emergency medical services.

(2) "Emergency services provider" means any public employer that employs persons to provide firefighting, dispatching services and emergency medical services.

(3) "Employee assistance program" means a program established by a law enforcement agency or emergency services provider to provide professional counseling or support services to employees of a law enforcement agency, emergency services provider or a professional mental health provider associated with a peer support team.

(4) "Law enforcement agency" means any public agency that employs law enforcement officers.

(5) "Law enforcement personnel" means a law enforcement officer, as defined in K.S.A. 22-2202 or 74-5602, and amendments thereto, an employee or volunteer of a law enforcement agency.

(6) "Peer support counseling session" means any session conducted by a peer support specialist that is called or requested in response to a critical incident or traumatic event involving the personnel of the law enforcement agency or emergency services provider.

(7) "Peer support specialist" is a person:

(A) Designated by a law enforcement agency, emergency services provider, employee assistance program or peer support team leader to lead, moderate or assist in a peer support counseling session;

(B) who is a member of a peer support team; and

(C) has received training in counseling and providing emotional and moral support to law enforcement officers or emergency services person-

nel who have been involved in emotionally traumatic incidents by reason of their employment.

(8) “Peer support team” means a group of peer support specialists serving one or more law enforcement providers or emergency services providers.

(b) Any communication made by a participant or peer support specialist in a peer support counseling session pursuant to this section, and any oral or written information conveyed in or as the result of the peer support counseling session, are 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) that is made between peer support specialists, between peer support specialists 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.

(d) The provisions of this section apply only to peer support counseling sessions conducted by a peer support specialist.

(e) (1) The provisions of this section apply to all oral communications, notes, records and reports arising out of a peer support counseling session.

(2) Any notes, records or reports arising out of a peer support counseling session shall not be public records and shall not be subject to the open records act, K.S.A. 45-215 et seq., and amendments thereto. The provisions of this paragraph shall expire on July 1, 2020, unless the legislature acts to reenact such provisions. The provisions of this paragraph shall be reviewed by the legislature prior to July 1, 2020.

(f) Any communication made by a participant or peer support specialist in a peer support counseling session subject to this section, and any oral or written information conveyed in a peer support counseling session subject to this section, are not admissible in any judicial proceeding, administrative proceeding, arbitration proceeding or other adjudicatory proceeding. Communications and information made confidential under this section shall not be disclosed by the participants in any judicial proceeding, administrative proceeding, arbitration proceeding or other adjudicatory proceeding. The limitations on disclosure imposed by this subsection include disclosure during any discovery conducted as part of an adjudicatory proceeding.

(g) Nothing in this section limits the discovery or introduction into evidence of knowledge acquired by any law enforcement personnel or emergency services personnel from observation made during the course of employment, or material or information acquired during the course of employment, that is otherwise subject to discovery or introduction into evidence.

(h) This section does not apply to any:

(1) Threat of suicide or criminal act made by a participant in a peer support counseling session, or any information conveyed in a peer support counseling session relating to a threat of suicide or criminal act;

(2) information relating to abuse of spouses, children or the elderly, or other information that is required to be reported by law;

(3) admission of criminal conduct;

(4) disclosure of testimony by a participant who received peer support counseling services and expressly consented to such disclosure; or

(5) disclosure of testimony by the surviving spouse or executor or administrator of the estate of a deceased participant who received peer support counseling services and such surviving spouse or executor or administrator expressly consented to such disclosure.

(i) This section does not prohibit any communications between peer support specialists who conduct peer support counseling sessions, or any communications between peer support specialists and the supervisors or staff of an employee assistance program.

(j) This section does not prohibit communications regarding fitness of an employee for duty between an employee assistance program and an employer.

(k) This section shall be part of and supplemental to article 4 of chapter 60 of the Kansas Statutes Annotated, and amendments thereto.

Sec. 4. K.S.A. 22-2202 is hereby amended to read as follows: 22-2202.

~~(1)~~ (a) “Appellate court” means the supreme court or court of appeals, depending on the context in which the term is used and the respective jurisdiction of those courts over appeals in criminal cases, as provided in K.S.A. 22-3601, and amendments thereto.

~~(2)~~ (b) “Appearance bond” means an agreement, with or without security, entered into by a person in custody by which the person is bound to comply with the conditions specified in the agreement.

~~(3)~~ (c) “Arraignment” means the formal act of calling the defendant before a court having jurisdiction to impose sentence for the offense charged, informing the defendant of the offense with which the defendant is charged, and asking the defendant whether the defendant is guilty or not guilty.

~~(4)~~ (d) “Arrest” means the taking of a person into custody in order that the person may be forthcoming to answer for the commission of a crime. The giving of a notice to appear is not an arrest.

~~(5)~~ (e) “Bail” means the security given for the purpose of insuring compliance with the terms of an appearance bond.

~~(6)~~ (f) “Bind over” means require a defendant to appear and answer before a district judge having jurisdiction to try the defendant for the felony with which the defendant is charged.

~~(7)~~ (g) “Charge” means a written statement presented to a court accusing a person of the commission of a crime and includes a complaint, information or indictment.

~~(8)~~ (h) “Complaint” means a written statement under oath of the essential facts constituting a crime, except that a citation or notice to appear issued by a law enforcement officer pursuant to and in compliance with K.S.A. 8-2106, and amendments thereto, or a citation or notice to appear issued pursuant to and in compliance with K.S.A. 32-1049, and amendments thereto, shall be deemed a valid complaint if it is signed by the law enforcement officer.

~~(9)~~ (i) “Custody” means the restraint of a person pursuant to an arrest or the order of a court or magistrate.

~~(10)~~ (j) “Detention” means the temporary restraint of a person by a law enforcement officer.

~~(11)~~ (k) “Indictment” means a written statement, presented by a grand jury to a court, which charges the commission of a crime.

~~(12)~~ (l) “Information” means a verified written statement signed by a county attorney or other authorized representative of the state of Kansas presented to a court, which charges the commission of a crime. An information verified upon information and belief by the county attorney or other authorized representative of the state of Kansas shall be sufficient.

~~(13)~~ (m) “Law enforcement officer” means any person who by virtue of office or public employment is vested by law with a duty to maintain public order or to make arrests for violation of the laws of the state of Kansas or ordinances of any municipality thereof or with a duty to maintain or assert custody or supervision over persons accused or convicted of crime, and includes court services officers, *community corrections officers*, parole officers and directors, security personnel and keepers of correctional institutions, jails or other institutions for the detention of persons accused or convicted of crime, while acting within the scope of their authority.

~~(14)~~ (n) “Magistrate” means an officer having power to issue a warrant for the arrest of a person charged with a crime and includes justices of the supreme court, judges of the court of appeals and judges of district courts.

~~(15)~~ (o) “Notice to appear” means a written request, issued by a law enforcement officer, that a person appear before a designated court at a stated time and place.

~~(16)~~ (p) “Preliminary examination” means a hearing before a magistrate on a complaint or information to determine if a felony has been committed and if there is probable cause to believe that the person charged committed it.

~~(17)~~ (q) “Prosecuting attorney” means any attorney who is authorized by law to appear for and on behalf of the state of Kansas in a criminal case, and includes the attorney general, an assistant attorney general, the county or district attorney, an assistant county or district attorney and any special prosecutor whose appearance is approved by the court. In the

case of prosecution for violation of a city ordinance, also, “prosecuting attorney” means the city attorney or any assistant city attorney.

~~(18)~~(r) “Search warrant” means a written order made by a magistrate directed to a law enforcement officer commanding the officer to search the premises described in the search warrant and to seize property described or identified in the search warrant.

~~(19)~~(s) “Summons” means a written order issued by a magistrate directing that a person appear before a designated court at a stated time and place and answer to a charge pending against the person.

~~(20)~~(t) “Warrant” means a written order made by a magistrate directed to any law enforcement officer commanding the officer to arrest the person named or described in the warrant.

Sec. 5. K.S.A. 22-2202 and K.S.A. 2014 Supp. 74-5616 and 74-5622 are hereby repealed.

Sec. 6. This act shall take effect and be in force from and after its publication in the statute book.

I hereby certify that the above BILL originated in the HOUSE, and was adopted by that body

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HOUSE adopted  
Conference Committee Report \_\_\_\_\_

\_\_\_\_\_  
*Speaker of the House.*

\_\_\_\_\_  
*Chief Clerk of the House.*

Passed the SENATE  
as amended \_\_\_\_\_

SENATE adopted  
Conference Committee Report \_\_\_\_\_

\_\_\_\_\_  
*President of the Senate.*

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*Secretary of the Senate.*

APPROVED \_\_\_\_\_

\_\_\_\_\_  
*Governor.*