

As Amended by Senate Committee

Session of 2019

HOUSE BILL No. 2365

By Committee on Judiciary

2-15

1 AN ACT concerning civil procedure and civil actions; relating to rules of
2 evidence; peer support counseling session communication privilege;
3 Kansas national guard members; amending K.S.A. 2018 Supp. 60-473
4 and repealing the existing section.
5

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

7 Section 1. K.S.A. 2018 Supp. 60-473 is hereby amended to read as
8 follows: 60-473. (a) For the purposes of this section:

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

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

16 (3) "Employee assistance program" means a program established by a
17 law enforcement agency—~~or~~, emergency services provider *or the Kansas*
18 *national guard* to provide professional counseling or support services to
19 employees of a law enforcement agency, emergency services provider,
20 *national guard member* or a professional mental health provider associated
21 with a peer support team.

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

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

27 (6) "*National guard member*" means a regularly enlisted, officer or
28 *civilian member of the Kansas national guard*.

29 (7) "Peer support counseling session" means any session conducted
30 by a peer support specialist that is called or requested in response to a
31 critical incident or traumatic event involving the personnel of the law
32 enforcement agency—~~or~~, emergency services provider *or the Kansas*
33 *national guard*.

34 (7)(8) "Peer support specialist" is a person:

1 (A) Designated by a law enforcement agency, emergency services
2 provider, *the Kansas national guard*, employee assistance program or peer
3 support team leader to lead, moderate or assist in a peer support counseling
4 session;

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

6 (C) has received training in counseling and providing emotional and
7 moral support to law enforcement officers—~~or~~, emergency services
8 personnel *or national guard members* who have been involved in
9 emotionally traumatic incidents by reason of their employment.

10 ~~(8)~~(9) "Peer support team" means a group of peer support specialists
11 serving one or more law enforcement providers or emergency services
12 providers.

13 (b) Any communication made by a participant or peer support
14 specialist in a peer support counseling session pursuant to this section, and
15 any oral or written information conveyed in or as the result of the peer
16 support counseling session, are confidential and may not be disclosed by
17 any person participating in the peer support counseling session.

18 (c) Any communication relating to a peer support counseling session
19 made confidential under subsection (b) that is made between peer support
20 specialists, between peer support specialists and the supervisors or staff of
21 an employee assistance program, or between the supervisors or staff of an
22 employee assistance program, is confidential and may not be disclosed.

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

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

28 (2) Any notes, records or reports arising out of a peer support
29 counseling session shall not be public records and shall not be subject to
30 the open records act, K.S.A. 45-215 et seq., and amendments thereto. The
31 provisions of this paragraph shall ~~expire on July 1, 2020~~ **2024**, ~~unless the~~
32 ~~legislature acts to reenact such provisions. The provisions of this~~
33 ~~paragraph shall be reviewed by the legislature prior to July 1, 2020~~ **2024**
34 **{not be required to be reviewed by the legislature and shall not expire in**
35 **accordance with K.S.A. 45-229, and amendments thereto}.**

36 ~~(3) Any notes, records or reports arising out of a peer support~~
37 ~~counseling session relating to national guard members shall be~~
38 ~~confidential and exempt from the open records act, K.S.A. 45-215 et seq.,~~
39 ~~and amendments thereto. The provisions of this paragraph shall expire on~~
40 ~~July 1, 2024, unless the legislature acts to reenact such provisions prior to~~
41 ~~July 1, 2024.~~

42 (f) Any communication made by a participant or peer support
43 specialist in a peer support counseling session subject to this section, and

1 any oral or written information conveyed in a peer support counseling
2 session subject to this section, are not admissible in any judicial
3 proceeding, administrative proceeding, arbitration proceeding or other
4 adjudicatory proceeding. Communications and information made
5 confidential under this section shall not be disclosed by the participants in
6 any judicial proceeding, administrative proceeding, arbitration proceeding
7 or other adjudicatory proceeding. The limitations on disclosure imposed by
8 this subsection include disclosure during any discovery conducted as part
9 of an adjudicatory proceeding.

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

16 (h) This section does not apply to any:

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

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

22 (3) admission of criminal conduct;

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

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

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

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

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

38 Sec. 2. K.S.A. 2018 Supp. 60-473 is hereby repealed.

39 Sec. 3. This act shall take effect and be in force from and after its
40 publication in the statute book.