

Substitute for SENATE BILL No. 131

By Committee on Corrections and Juvenile Justice

2-26

1 AN ACT concerning public safety; relating to peer support counseling
2 sessions; emergency services personnel and law enforcement
3 personnel; amending K.S.A. 22-2202 and repealing the existing
4 section.

5
6 *Be it enacted by the Legislature of the State of Kansas:*

7 New Section 1. (a) For the purposes of this section:

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

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

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

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

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

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

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

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

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

34 (C) has received training in counseling and providing emotional and
35 moral support to law enforcement officers or emergency services
36 personnel who have been involved in emotionally traumatic incidents by

1 reason of their employment.

2 (8) "Peer support team" means a group of peer support specialists
3 serving one or more law enforcement providers or emergency services
4 providers.

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

10 (c) Any communication relating to a peer support counseling session
11 made confidential under subsection (b) that is made between peer support
12 specialists, between peer support specialists and the supervisors or staff of
13 an employee assistance program, or between the supervisors or staff of an
14 employee assistance program, is confidential and may not be disclosed.

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

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

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

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

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

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

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

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

6 (3) admission of criminal conduct;

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

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

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

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

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

22 Sec. 2. K.S.A. 22-2202 is hereby amended to read as follows: 22-
23 2202. ~~(1)~~ (a) "Appellate court" means the supreme court or court of
24 appeals, depending on the context in which the term is used and the
25 respective jurisdiction of those courts over appeals in criminal cases, as
26 provided in K.S.A. 22-3601, and amendments thereto.

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

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

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

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

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

43 ~~(7)~~ (g) "Charge" means a written statement presented to a court

1 accusing a person of the commission of a crime and includes a complaint,
2 information or indictment.

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

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

12 ~~(10)~~ (j) "Detention" means the temporary restraint of a person by a
13 law enforcement officer.

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

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

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

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

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

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

42 ~~(17)~~ (q) "Prosecuting attorney" means any attorney who is authorized
43 by law to appear for and on behalf of the state of Kansas in a criminal

1 case, and includes the attorney general, an assistant attorney general, the
2 county or district attorney, an assistant county or district attorney and any
3 special prosecutor whose appearance is approved by the court. In the case
4 of prosecution for violation of a city ordinance, also, "prosecuting
5 attorney" means the city attorney or any assistant city attorney.

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

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

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

16 Sec. 3. K.S.A. 22-2202 is hereby repealed.

17 Sec. 4. This act shall take effect and be in force from and after its
18 publication in the statute book.