

As Amended by House Committee

Session of 2011

HOUSE BILL No. 2104

By Committee on Corrections and Juvenile Justice

1-26

1 AN ACT concerning mental health information; relating to access by
2 law enforcement officers; amending K.S.A. 2010 Supp. 65-5603 and
3 repealing the existing section.

4

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

6 Section 1. K.S.A. 2010 Supp. 65-5603 is hereby amended to read
7 as follows: 65-5603. (a) The privilege established by K.S.A. 65-5602
8 and amendments thereto shall not extend to:

9 (1) Any communication relevant to an issue in proceedings to
10 involuntarily commit to treatment a patient for mental illness,
11 alcoholism or drug dependency if the treatment personnel in the course
12 of diagnosis or treatment has determined that the patient is in need of
13 hospitalization;

14 (2) an order for examination of the mental, alcoholic, drug
15 dependency or emotional condition of the patient which is entered by a
16 judge, with respect to the particular purpose for which the examination
17 is ordered;

18 (3) any proceeding in which the patient relies upon any of the
19 aforementioned conditions as an element of the patient's claim or
20 defense, or, after the patient's death, in any proceeding in which any
21 party relies upon any of the patient's conditions as an element of a
22 claim or defense;

23 (4) any communication which forms the substance of information
24 which the treatment personnel or the patient is required by law to report
25 to a public official or to be recorded in a public office, unless the statute
26 requiring the report or record specifically provides that the information
27 shall not be disclosed;

28 (5) any information necessary for the emergency treatment of a
29 patient or former patient if the head of the treatment facility at which
30 the patient is being treated or was treated states in writing the reasons
31 for disclosure of the communication and makes such statement a part of
32 the treatment or medical record of the patient;

33 (6) information relevant to protect a person who has been

1 threatened with substantial physical harm by a patient during the course
2 of treatment, when such person has been specifically identified by the
3 patient, the treatment personnel believes there is substantial likelihood
4 that the patient will act on such threat in the reasonable foreseeable
5 future and the head of the treatment facility has concluded that
6 notification should be given. The patient shall be notified that such
7 information has been communicated;

8 (7) any information from a state psychiatric hospital to appropriate
9 administrative staff of the department of corrections whenever patients
10 have been administratively transferred to a state psychiatric hospital
11 pursuant to the provisions of K.S.A. 75-5209, and amendments thereto;

12 (8) any information to the patient or former patient, except that the
13 head of the treatment facility at which the patient is being treated or
14 was treated may refuse to disclose portions of such records if the head
15 of the treatment facility states in writing that such disclosure will be
16 injurious to the welfare of the patient or former patient;

17 (9) any information to any state or national accreditation,
18 certification or licensing authority, or scholarly investigator, but the
19 head of the treatment facility shall require, before such disclosure is
20 made, a pledge that the name of any patient or former patient shall not
21 be disclosed to any person not otherwise authorized by law to receive
22 such information;

23 (10) any information to the state protection and advocacy system
24 which concerns individuals who reside in a treatment facility and which
25 is required by federal law and federal rules and regulations to be
26 available pursuant to a federal grant-in-aid program;

27 (11) any information relevant to the collection of a bill for
28 professional services rendered by a treatment facility; or

29 (12) any information sought by a coroner serving under the laws
30 of Kansas when such information is material to an investigation or
31 proceeding conducted by the coroner in the performance of such
32 coroner's official duties. Information obtained by a coroner under this
33 provision shall be used for official purposes only and shall not be made
34 public unless admitted as evidence by a court or for purposes of
35 performing the coroner's statutory duties;

36 (13) any communication and information by and between or
37 among treatment facilities, correctional institutions, jails, juvenile
38 detention facilities or juvenile correctional facilities regarding a
39 proposed patient, patient or former patient for purposes of promoting

1 continuity of care by and between treatment facilities, correctional
2 institutions, jails, juvenile detention facilities or juvenile correctional
3 facilities; the proposed patient, patient, or former patient's consent shall
4 not be necessary to share evaluation and treatment records by and
5 between or among treatment facilities, correctional institutions, jails,
6 juvenile detention facilities or juvenile correctional facilities regarding
7 a proposed patient, patient or former patient;

8 (14) the name, date of birth, date of death, name of any next of kin
9 and place of residence of a deceased former patient when that
10 information is sought as part of a genealogical study; or

11 (15) any information concerning a patient or former patient who is
12 a juvenile offender in the custody of the juvenile justice authority when
13 the commissioner of juvenile justice, or the commissioner's designee,
14 requests such information; or

15 ~~(16)(a) any communication and information concerning a current~~
16 ~~or former patient of any treatment facility, information limited to~~
17 **whether a person is a current patient of any treatment facility such**
18 **patient person** *having been lawfully detained by a law enforcement*
19 *officer, if such law enforcement officer has reasonable suspicion that*
20 *such individual person is suffering from mental illness and such law*
21 *enforcement officer has a reasonable belief that such individual person*
22 *may benefit from treatment at a treatment facility rather than being*
23 *placed in a correctional institution, jail, juvenile correctional facility*
24 *or juvenile detention facility. Any communication and information*
25 *obtained by any law enforcement officer regarding such individual*
26 **person** *from such treatment facility shall not be disclosed except as*
27 *provided by this section.*

28 (b) *As used in this subsection:*

29 (1) *"Correctional institution" means the same as prescribed in*
30 *K.S.A. 75-5202, and amendments thereto;*

31 (2) *"Jail" means the same as prescribed in K.S.A. 2010 Supp. 38-*
32 *3202, and amendments thereto;*

33 (3) *"Juvenile correctional facility" means the same as prescribed*
34 *in K.S.A. 2010 Supp. 38-3202, and amendments thereto;*

35 (4) *"Juvenile detention facility" means the same as prescribed in*
36 *K.S.A. 2010 Supp. 38-3202, and amendments thereto;*

37 (1) *"Law enforcement officer" means the same as prescribed in*
38 *K.S.A. 22-2202, and amendments thereto; and*

39 (2) *"mental illness" means mental disease to such extent that a*

1 *person so afflicted requires care and treatment for his own welfare, the*
2 *welfare of others or the welfare of the community.*

3 ~~(b)~~(c) The treatment personnel shall not disclose any information
4 subject to subsection (a)(3) unless a judge has entered an order finding
5 that the patient has made such patient's condition an issue of the
6 patient's claim or defense. The order shall indicate the parties to whom
7 otherwise confidential information must be disclosed.

8 Sec. 2. K.S.A. 2010 Supp. 65-5603 is hereby repealed.

9 Sec. 3. This act shall take effect and be in force from and after its
10 publication in the Kansas register.

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