

HOUSE BILL No. 2104

By Committee on Corrections and Juvenile Justice

1-26

1 AN ACT concerning mental health information; relating to access by law
2 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 as
7 follows: 65-5603. (a) The privilege established by K.S.A. 65-5602 and
8 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, alcoholism
11 or drug dependency if the treatment personnel in the course of diagnosis or
12 treatment has determined that the patient is in need of hospitalization;

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

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

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

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

31 (6) information relevant to protect a person who has been threatened
32 with substantial physical harm by a patient during the course of treatment,
33 when such person has been specifically identified by the patient, the
34 treatment personnel believes there is substantial likelihood that the patient

1 will act on such threat in the reasonable foreseeable future and the head of
2 the treatment facility has concluded that notification should be given. The
3 patient shall be notified that such information has been communicated;

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

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

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

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

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

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

31 (13) any communication and information by and between or among
32 treatment facilities, correctional institutions, jails, juvenile detention
33 facilities or juvenile correctional facilities regarding a proposed patient,
34 patient or former patient for purposes of promoting continuity of care by
35 and between treatment facilities, correctional institutions, jails, juvenile
36 detention facilities or juvenile correctional facilities; the proposed patient,
37 patient, or former patient's consent shall not be necessary to share
38 evaluation and treatment records by and between or among treatment
39 facilities, correctional institutions, jails, juvenile detention facilities or
40 juvenile correctional facilities regarding a proposed patient, patient or
41 former patient;

42 (14) the name, date of birth, date of death, name of any next of kin
43 and place of residence of a deceased former patient when that information

1 is sought as part of a genealogical study; ~~or~~

2 (15) any information concerning a patient or former patient who is a
3 juvenile offender in the custody of the juvenile justice authority when the
4 commissioner of juvenile justice, or the commissioner's designee, requests
5 such information; *or*

6 ~~(16)(a) any communication and information concerning a current or~~
7 ~~former patient of any treatment facility~~ **information limited to whether a**
8 **person is a current patient of any treatment facility, such patient**
9 **person** *having been lawfully ~~detained~~ arrested* by a law enforcement
10 officer, if such law enforcement officer has reasonable suspicion that such
11 ~~individual~~ **person** is suffering from mental illness and such law
12 enforcement officer has a reasonable belief that such ~~individual~~ **person**
13 may benefit from treatment at a treatment facility rather than being placed
14 in a correctional institution, jail, juvenile correctional facility or juvenile
15 detention facility. Any communication and information obtained by any
16 law enforcement officer regarding such ~~individual~~ **person** from such
17 treatment facility shall not be disclosed except as provided by this section.

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

19 (1) *"Correctional institution" means the same as prescribed in K.S.A.*
20 *75-5202, and amendments thereto;*

21 (2) *"Jail" means the same as prescribed in K.S.A. 2010 Supp. 38-*
22 *3202, and amendments thereto;*

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

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

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

29 (2) *"mental illness" means mental disease to such extent that a*
30 *person so afflicted requires care and treatment for his own welfare, the*
31 *welfare of others or the welfare of the community.*

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

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

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

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