

SESSION OF 2015

**SUPPLEMENTAL NOTE ON SUBSTITUTE FOR SENATE
BILL NO. 131**

As Recommended by Senate Committee on
Corrections and Juvenile Justice

Brief*

Sub. for SB 131 would enact provisions related to the confidentiality of communications within a “peer support counseling session” (session), which would be defined as a 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 a law enforcement agency (agency) or emergency services provider (provider). “Peer support specialist” (specialist) would be defined as a person who has been designated by an agency, provider, employee assistance program (EAP), or peer support team leader; is a member of a peer support team; and has received training in counseling and in providing emotional and moral support to law enforcement officers (officers) or emergency services personnel who have been involved in emotionally traumatic incidents due to their employment. The bill also would define “emergency services personnel,” “emergency services provider,” “employee assistance program,” “law enforcement agency,” “law enforcement personnel,” and “peer support team.”

The bill would establish that any communication made by a participant or specialist in a session and any oral or written information conveyed in or as the result of a session are confidential and may not be disclosed by any participant in the session. Such communication also would be inadmissible in any judicial proceeding, administrative

*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

proceeding, arbitration proceeding, or other adjudicatory proceeding.

Similarly, any communication relating to a confidential session made between specialists, specialists and the supervisors or staff of an EAP, or supervisors or staff of an EAP would be confidential and disclosure would be prohibited.

These provisions would apply only to sessions conducted by a specialist, and would apply to all oral communications, notes, records, and reports arising out of a session.

Notes, records, or reports arising out of a session would not be public records and would not be subject to the Kansas Open Records Act. This provision would expire on July 1, 2020, unless reviewed and reenacted by the Legislature prior to that date.

Any communication or information that is made confidential by the bill would be prohibited from being disclosed by the participants in any judicial proceeding, administrative proceeding, arbitration proceeding, or other adjudicatory proceeding (including discovery). Nothing in the bill would limit the discovery or introduction into evidence of knowledge acquired by law enforcement or emergency services personnel from observation made or material or information acquired during the course of employment, that would otherwise be subject to discovery or introduction into evidence.

The provisions would not apply to any:

- Threat of suicide or criminal act, or information conveyed relating to such threat, made by a session participant;

- Information relating to abuse of spouses, children, or the elderly, or other information required to be reported by law;
- Admission of criminal conduct;
- Disclosure of testimony by a participant who expressly consented to such disclosure; or
- Disclosure of testimony by the surviving spouse or executor or administrator of the estate of a deceased participant who received counseling services, when such surviving spouse or executor or administrator expressly consented to such disclosure.

The bill would clarify it does not prohibit any communications between specialists who conduct sessions or between specialists and the supervisors or staff of an EAP and does not prohibit communications between an EAP and an employer regarding fitness of an employee for duty.

The bill would amend the definition of “law enforcement officer” in the Code of Criminal Procedure (referenced in the definition of “law enforcement personnel” in this bill) to include “community corrections officers.”

Background

SB 131 was introduced by the Senate Committee on Federal and State Affairs. As introduced, the bill would have established certain rights and privileges for officers and correctional officers employed by or appointed to an agency or a correctional agency.

The Senate Committee on Corrections and Juvenile Justice recommended a substitute bill containing contents modified from SB 196, concerning peer support counseling sessions.

Background of SB 196

SB 196 was introduced by the Senate Committee on Corrections and Juvenile Justice at the request of the Kansas Association of Chiefs of Police, Kansas Peace Officers Association, and Kansas Sheriffs' Association.

In the Senate Committee, a representative of the above law enforcement organizations, as well as representatives of the Topeka Police Department, Kansas Association of Court Services Officers, and Kansas State Council of Fire Fighters testified in support of the bill. Representatives of the Kansas Highway Patrol and Kansas Emergency Medical Services Association submitted written testimony supporting the bill.

The Senate Committee amended the bill's language by adding or modifying several definitions, changing the term "counselor" to "peer support specialist," specifying the bill would not prohibit communications between an EAP and an employer regarding fitness of an employee for duty, and amending the definition of "law enforcement officer" in the Code of Criminal Procedure to clarify community corrections officers would be included in this bill's provisions. The Committee then recommended the amended language as a substitute bill for SB 131.

According to the fiscal note prepared by the Division of the Budget on SB 196, as introduced, the Kansas Highway Patrol, Kansas Bureau of Investigation (KBI), and Emergency Medical Services Board indicate the bill would have no fiscal effect. The KBI notes it has an existing EAP and offers peer support counseling sessions.