

**65-5603. Exceptions to privilege.** (a) The privilege established by K.S.A. 65-5602, and amendments thereto, shall not extend to:

- (1) Any communication relevant to an issue in proceedings to involuntarily commit to treatment a patient for mental illness, alcoholism or drug dependency if the treatment personnel in the course of diagnosis or treatment has determined that the patient is in need of hospitalization;
- (2) an order for examination of the mental, alcoholic, drug dependency or emotional condition of the patient which is entered by a judge, with respect to the particular purpose for which the examination is ordered;
- (3) any proceeding in which the patient relies upon any of the aforementioned conditions as an element of the patient's claim or defense, or, after the patient's death, in any proceeding in which any party relies upon any of the patient's conditions as an element of a claim or defense;
- (4) any communication which forms the substance of information which the treatment personnel or the patient is required by law to report to a public official or to be recorded in a public office, unless the statute requiring the report or record specifically provides that the information shall not be disclosed;
- (5) any information necessary for the emergency treatment of a patient or former patient if the head of the treatment facility at which the patient is being treated or was treated states in writing the reasons for disclosure of the communication and makes such statement a part of the treatment or medical record of the patient;
- (6) information relevant to protect a person who has been threatened with substantial physical harm by a patient during the course of treatment, when such person has been specifically identified by the patient, the treatment personnel believes there is substantial likelihood that the patient will act on such threat in the reasonable foreseeable future and the head of the treatment facility has concluded that notification should be given. The patient shall be notified that such information has been communicated;
- (7) any information from a state psychiatric hospital to appropriate administrative staff of the department of corrections whenever patients have been administratively transferred to a state psychiatric hospital pursuant to the provisions of K.S.A. 75-5209, and amendments thereto;
- (8) any information to the patient or former patient, except that the head of the treatment facility at which the patient is being treated or was treated may refuse to disclose portions of such records if the head of the treatment facility states in writing that such disclosure will be injurious to the welfare of the patient or former patient;
- (9) any information to any state or national accreditation, certification or licensing authority, or scholarly investigator, but the head of the treatment facility shall require, before such disclosure is made, a pledge that the name of any patient or former patient shall not be disclosed to any person not otherwise authorized by law to receive such information;
- (10) any information to the state protection and advocacy system which concerns individuals who reside in a treatment facility and which is required by federal law and federal rules and regulations to be available pursuant to a federal grant-in-aid program;
- (11) any information relevant to the collection of a bill for professional services rendered by a treatment facility;
- (12) any information sought by a coroner serving under the laws of Kansas when such information is material to an investigation or proceeding conducted by the coroner in the performance of such coroner's official duties. Information obtained by a coroner under this provision shall be used for official purposes only and shall not be made public unless admitted as evidence by a court or for purposes of performing the coroner's statutory duties;
- (13) any communication and information by and between or among treatment facilities, correctional institutions, jails, juvenile detention facilities or juvenile correctional facilities regarding a proposed patient, patient or former patient for purposes of promoting continuity of care by and between treatment facilities, correctional institutions, jails, juvenile detention facilities or juvenile correctional facilities; the proposed patient, patient, or former patient's consent shall not be necessary to share evaluation and treatment records by and between or among treatment facilities, correctional institutions, jails, juvenile detention facilities or juvenile correctional facilities regarding a proposed patient, patient or former patient;
- (14) the name, date of birth, date of death, name of any next of kin and place of residence of a deceased former patient when that information is sought as part of a genealogical study;
- (15) any information concerning a patient or former patient who is a juvenile offender in the custody of the juvenile justice authority when the commissioner of juvenile justice, or the commissioner's designee, requests such information; or
- (16) information limited to whether a person is or has been a patient of any treatment facility within the last six months, such person having been lawfully detained by a law enforcement officer upon reasonable suspicion that such person is committing, has committed or is about to commit a misdemeanor or felony, if such law enforcement officer has reasonable suspicion that such person is suffering from mental illness and such law enforcement officer has a reasonable belief that such person may benefit from treatment at a treatment facility rather than being placed in a correctional institution, jail, juvenile correctional facility or juvenile detention facility. Any communication and information obtained by any law enforcement officer regarding such person from such treatment facility shall not be disclosed except as provided by this section.

(b) As used in this subsection:

- (1) "Correctional institution" means the same as prescribed in K.S.A. 75-5202, and amendments thereto;
- (2) "jail" means the same as prescribed in K.S.A. 2016 Supp. 38-2302, and amendments thereto;
- (3) "juvenile correctional facility" means the same as prescribed in K.S.A. 2016 Supp. 38-2302, and amendments thereto;
- (4) "juvenile detention facility" means the same as prescribed in K.S.A. 2016 Supp. 38-2302, and amendments thereto;
- (5) "law enforcement officer" means the same as prescribed in K.S.A. 22-2202, and amendments thereto; and
- (6) "mental illness" means mental disease to such extent that a person so afflicted requires care and treatment for his own welfare, the welfare of others or the welfare of the community.

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

**History:** L. 1986, ch. 212, § 3; L. 1987, ch. 254, § 1; L. 1988, ch. 305, § 1; L. 1990, ch. 92, § 34; L. 1996, ch. 167, § 61; L. 2003, ch. 66, § 3; L. 2005, ch. 27, § 1; L. 2005, ch. 186, § 16; L. 2011, ch. 70, § 1; L. 2012, ch. 39, § 1; L. 2016, ch. 46, § 55; July 1.

**Revisor's Note:**

Section was also amended by L. 2005, ch. 160, § 2, but that version was repealed by L. 2005, ch. 186, § 23.