

1 STATE OF OKLAHOMA

2 1st Session of the 59th Legislature (2023)

3 HOUSE BILL 2686

By: Hays

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5
6 AS INTRODUCED

7 An Act relating to emergency first responder mental
8 health; creating the Oklahoma First Responder Mental
9 Health Initiative Act; providing for definitions;
10 declaring rights for first responders and behavioral
11 health care; providing for codification; and
12 providing an effective date.

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14 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

15 SECTION 1. NEW LAW A new section of law to be codified
16 in the Oklahoma Statutes as Section 950 of Title 43A, unless there
17 is created a duplication in numbering, reads as follows:

18 This act shall be known and may be cited as the "Oklahoma First
19 Responder Mental Health Initiative Act".

20 SECTION 2. NEW LAW A new section of law to be codified
21 in the Oklahoma Statutes as Section 951 of Title 43A, unless there
22 is created a duplication in numbering, reads as follows:

23 As used in this act:
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- 1 1. "Behavioral health" or "behavioral health care" means
2 treatment for mental health, substance use disorder, or both, co-
3 occurring together;
- 4 2. "Emergency services personnel" means any employee of an
5 emergency services provider who is engaged in providing services as
6 a first responder;
- 7 3. "Emergency services provider" means any public employer that
8 employs persons to provide firefighting services;
- 9 4. "Employee" means a first responder employed by a unit of
10 state or local government, by a public hospital or ambulance
11 service, or by a 911 dispatching agency;
- 12 5. "Employer" means the state, a unit of local government, or a
13 public hospital or ambulance service that employs first responders;
- 14 6. "First responder" means a law enforcement officer, 911
15 dispatcher, paramedic, emergency medical technician, or a volunteer
16 or full-time paid firefighter employed by a unit of local
17 government, a public hospital, or an ambulance service that employs
18 first responders;
- 19 7. "Law enforcement agency" means any county sheriff, municipal
20 police department, police department established by a university or
21 college, the Department of Public Safety, the Department of
22 Corrections, or other state, local, or county agency comprised of
23 county probation officers, corrections employees, or 911
24 telecommunicators or emergency medical dispatchers;

1 8. "Peer support advisor" means an employee approved by the law
2 enforcement agency or the emergency services provider who
3 voluntarily provides confidential support and assistance to fellow
4 employees experiencing personal or professional problems. An
5 emergency services provider or law enforcement agency shall provide
6 peer support advisors with an appropriate level of training in
7 counseling to provide emotional and moral support;

8 9. "Peer support counseling program" means a program
9 established by an emergency services provider, a law enforcement
10 agency, state or local police, or a firefighter organization to
11 train employees to serve as peer support advisors in order to
12 conduct peer support counseling sessions;

13 10. "Peer support counseling session" means communication with
14 a peer support advisor designated by an emergency services provider
15 or law enforcement agency. A peer support counseling session is
16 accomplished primarily through listening, assessing, assisting with
17 problem solving, making referrals to a professional when necessary,
18 and conducting follow-up as needed;

19 11. "Post-traumatic stress disorder" means any psychological or
20 behavioral health injury suffered by a first responder by and
21 through his or her employment due to his or her exposures to
22 stressful and life-threatening situations and rigors of the job,
23 excluding a psychological or behavioral health injury that arises
24 solely as a result of a legitimate personnel action by the employer

1 such as transfer, promotion, demotion, or termination, which shall
2 not be considered a compensable injury under this act; and

3 12. "Record" means any record kept by a therapist or by an
4 agency in the course of providing behavioral health care to a first
5 responder concerning the first responder and the services provided.
6 Record includes the personal notes of the therapist or agency, as
7 well as all records maintained by a court that have been created in
8 connection with, in preparation for, or as a result of the filing of
9 any petition. Record does not include information that has been de-
10 identified in accordance with the federal Health Insurance
11 Portability and Accountability Act (HIPAA) and does not include a
12 reference to the receipt of behavioral health care noted during a
13 patient history and physical or other summary of care.

14 SECTION 3. NEW LAW A new section of law to be codified
15 in the Oklahoma Statutes as Section 952 of Title 43A, unless there
16 is created a duplication in numbering, reads as follows:

17 A. First responders shall have the following rights to
18 behavioral health care:

19 1. The right of full access to behavioral health care services
20 and treatment that are responsive to the needs of the individual and
21 the professions of police officers, firefighters, emergency medical
22 technicians, 911 dispatchers, and paramedics;

23 2. The right to seek, or access if required or requested,
24 services and treatment for behavioral health needs without fear of

1 repercussions by his or her employer or supervisor and without fear
2 of reprisal;

3 3. The right, in the course of seeking services and treatment
4 for behavioral health, that all records, notes, and conclusions by
5 the treatment provider shall not be shared with an employer unless
6 otherwise mandated by law. The right guaranteed by this paragraph
7 may be waived by the employee;

8 4. The right of first responder employees not to be compelled
9 by their employer under the threat of discipline to release any
10 records related to behavioral health;

11 5. The right to have behavioral health records not be used in
12 any disciplinary or other proceeding against an employee;

13 6. The right of first responder employees to seek treatment in
14 any geographic area without restrictions or limitations imposed by
15 the employer or insurance carrier;

16 7. The right to receive behavioral health services and
17 treatment in a manner that reduces stigma and barriers to those
18 services and treatment;

19 8. The right to receive expanded Family and Medical Leave Act
20 protections for individuals voluntarily seeking preventative
21 treatment;

22 9. The right to be diagnosed by a licensed psychiatrist,
23 psychologist, or professional counselor specializing in first
24 responder mental health;

1 10. The right to separate living quarters and treatment areas
2 within behavioral health and detox facilities from other patients to
3 keep anonymity and reduce triggering events; and

4 11. The right for all first responders retired from service for
5 a period of up to thirty-six (36) months to have full access to
6 behavioral health treatment regardless of Medicare restrictions.

7 B. The rights guaranteed to first responders in this section
8 shall be judicially enforceable. An aggrieved employee may bring an
9 action for damages, attorney fees, or injunctive relief against an
10 employer for violating the provisions of this section.

11 C. 1. Any communication made by an employee of an emergency
12 services provider, law enforcement agency, or peer support advisor
13 in a peer support counseling session, as well as any oral or written
14 information conveyed in the peer support counseling session, shall
15 be confidential and shall not be disclosed by any person
16 participating in the peer support counseling session or released to
17 any person or entity. Any communication relating to a peer support
18 counseling session made confidential under this section that is made
19 between peer support advisors and the supervisors or staff of a peer
20 support counseling program, or between the supervisor or staff of a
21 peer support counseling program, shall be confidential and shall not
22 be disclosed. The provisions of this section shall not be construed
23 to prohibit any communications between counselors who conduct peer
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1 support counseling sessions or any communications between counselors
2 and the supervisors or staff of a peer support counseling program.

3 2. Any communication described in paragraph 1 of this
4 subsection may be subject to a subpoena for good cause shown.

5 3. The provisions of this subsection shall not apply to the
6 following:

7 a. any threat of suicide or homicide made by a
8 participant in a peer support counseling session or
9 any information conveyed in a peer support counseling
10 session related to a threat of suicide or homicide,

11 b. any information mandated by law or agency policy to be
12 reported, including, but not limited to, domestic
13 violence, child abuse or neglect, or elder abuse or
14 neglect,

15 c. any admission of criminal conduct, or

16 d. any admission or act of refusal to perform duties to
17 protect others or the employee of the emergency
18 services provider or law enforcement agency.

19 4. All communications, notes, records, and reports arising out
20 of a peer support counseling session shall not be considered a
21 public record subject to disclosure under the Oklahoma Open Records
22 Act of the Oklahoma Statutes.

23 5. A department or organization that establishes a peer support
24 counseling program shall develop a policy or rule that imposes

1 disciplinary measures against a peer support advisor who violates
2 the confidentiality of the peer support counseling program by
3 sharing information learned in a peer support counseling session
4 with personnel who are not supervisors or staff of the peer support
5 counseling program, unless otherwise exempted under the provisions
6 of this subsection.

7 6. If the emergency services provider or law enforcement agency
8 uses confidential information obtained during a confidential peer
9 support counseling session conducted by a law enforcement agency or
10 by an emergency services provider in violation of this subsection,
11 then the aggrieved employee whose rights have been violated shall
12 have a cause for an adverse employment action against the provider
13 or agency.

14 7. Nothing in this subsection shall be construed to limit or
15 reduce any confidentiality protections or legal privileges that are
16 otherwise provided by law or rule, including, but not limited to,
17 local ordinance, state or federal law, or court rule. Any
18 confidentiality provision enacted by local ordinance on or after the
19 effective date of this act shall not diminish the protections
20 enumerated in this subsection.

21 D. Any emergency services provider, law enforcement agency, or
22 statewide or local collective bargaining organization that creates a
23 peer support program shall be subject to the provisions of this
24 section. An emergency services provider, law enforcement agency, or

1 collective bargaining organization shall ensure that peer support
2 advisors receive appropriate training in counseling to conduct peer
3 support counseling sessions. Emergency services personnel and
4 public safety personnel may refer any person to a peer support
5 advisor within the emergency services provider or law enforcement
6 agency, or if those services are not available within the agency, to
7 another peer support counseling program that is available and
8 approved by the emergency services provider or law enforcement
9 agency. Notwithstanding any other provision of law to the contrary,
10 public safety personnel shall not mandate that any employee
11 participate in a peer support counseling program.

12 SECTION 4. This act shall become effective November 1, 2023.

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