

DOMESTIC VIOLENCE AND DATING VIOLENCE EDUCATION AND REFERRAL

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The 2017 General Assembly passed SB 86 (sponsored by Senator Ralph Alvarado) to amend the mandatory reporting law as it relates to domestic violence. Prior to its passage, it was combined with another domestic violence bill (HB 309), so was passed as a package. The purpose of the legislation was to remove mandatory reporting and replace it with mandatory education and referral. Victims may still ask a professional to contact law enforcement.

This handout provides background information on the law (pages 1-3) and a comparison of the old law to the new law which became effective June 29, 2017.

- History and Purpose of Kentucky's Original Mandatory Reporting Law
 - The mandatory reporting law related to spouse abuse (domestic violence) was passed by the Kentucky General Assembly in 1978.
 - The law's original purpose was very important at the time of the bill's passage.
 - Take burden off victims for reportage
 - Increase access to protective services for victims
 - Communicate that the state thinks domestic violence is wrong
 - Provide for data collection to help create policy and programming

- Does the Current Implementation of the Mandatory Reporting Law Meet its Original Intent?
 - The law continues to take the burden for reporting off the victim. However, research finds that even victims who support a mandatory reporting law would prefer that victims are empowered by having a choice about whether a report is made (Sullivan & Hagen, 2005).
 - Does the law increase access to protection? Data from the Cabinet suggests it may not (see below). Fewer women reach out for help to a domestic violence program, to a doctor or nurse, or to a therapist if they know in advance of the mandatory reporting law (e.g., Jordan & Pritchard, 2016; Sullivan & Hagen, 2005). One study also showed that mandatory reporting laws did not increase reports to law enforcement (Sachs, Peek, Baraff Hasselblad, 1998).
 - In 1978 when the law was passed, there were very few domestic violence programs, meaning that the Cabinet for Health and Family Services was the primary service provider for domestic violence cases. Today there are regional domestic violence programs in every area development district, and the statute now designates the domestic violence programs as primary service providers (KRS 209A) in Kentucky.
 - The law continues to communicate that the state thinks domestic violence is wrong, as does the involvement of trained law enforcement and other professionals.

- The data collected at the present time are limited to incidents, they do not provide information about the prevalence of domestic violence in Kentucky. The need for Cabinet data has been reduced in the last few years as other state and national studies are available that reflect large, diverse samples and show prevalence data for each state. For example, the National Intimate Partner & Sexual Violence Survey published by the Centers for Disease Control in 2011 reported that in Kentucky the lifetime prevalence for completed and attempted rape among women means that the Commonwealth will have 299,000 survivors of this specific crime. In instances of forcible rape, 53% of these cases are perpetrated by a current or former intimate partner; an additional 38.7% of women who are raped are assaulted by an acquaintance. The NIPSVS also found that Kentucky has an estimated 394,000 women who have been stalked in their lifetimes, with 71.5% of those cases involving a current or former intimate partner. Finally, Kentucky's rate of intimate partner violence (defined as any sexual violence contact, physical violence and/or stalking) means an estimated 775,000 female survivors.
- Comparison to Other State Laws
 - Only 3 states in the U.S. have a mandatory reporting law that is specific to domestic violence (Kentucky, Oklahoma, Arkansas). Kentucky had no exceptions to the reporting law under the previous model; Oklahoma law allows no report to be made if the victim does not want the abuse to be reported.
 - Three states specifically exempt the reportage of domestic violence or sexual assault (Pennsylvania, Tennessee, New Hampshire) from their laws that require reporting by health care providers of injuries resulting from criminal conduct.
- Data from the Kentucky Cabinet for Health and Family Services

Cabinet receives approximately 40,000 reports of domestic violence annually.

 - In 2012, approximately 50% of DV reports were not investigated because Cabinet couldn't contact the adult victim.
 - Of the remaining cases that were investigated, over half the time, the victim did not wish to access the services of the Cabinet.
 - A very small percentage of substantiated cases ultimately results in a case being opened and on-going protective services provided.
 - For example, effective October 2012, the Cabinet reports that there were approximately 40 open domestic violence cases while there were approximately 13,000 open child protection cases.
- Findings from University of Kentucky Surveys (Jordan & Pritchard, 2016)
 - In 2016, Carol Jordan from the University of Kentucky and Adam Pritchard from the University of Central Florida partnered with the Kentucky Coalition Against Domestic Violence to conduct two research studies:
 - Survey with 388 women served by domestic violence programs across the state.
 - Women were asked whether they would disclose their abuse if they knew their case would be reported to Cabinet:

- 35.6% of women reported being less likely to contact a DV Program;
 - 50.5% of women said they would be less likely to tell a doctor or nurse;
 - 47.9% of the women said they would be less likely to tell a therapist.
- When women were asked what the Cabinet did for them after a report was made, the largest percentage (40%) said the Cabinet referred them to other services.
- Survey with mental health professionals:
 - When therapists were asked what the responses of their clients were to reports being made, the largest single percentage said that most of their clients were fearful that a report could place them at risk of further harm.
 - The majority of therapists were already making referrals to local domestic violence programs (40%) and rape crisis centers (28%).
 - Some therapists supported the current law; others thought it created more risk for victims; others were concerned that it was a violation of privileged communication which would lead to victims dropping out of care; still others thought it would be more empowering for victims to have this be an optional reporting only with their consent.

**AN ACT relating to domestic and dating violence abuse education and referral
KRS 209A**

	Previous Law (created 1978)	Current Law (effective June 30, 2017)	Description of Changes
Purpose of the Law	The original purpose of this chapter was to identify victims of domestic violence, abuse, or neglect inflicted by a spouse through a mandatory reporting mechanism, and to provide for the protection of adults who choose to access those services. It was also intended to collect data on spouse abuse.	The current purpose of this chapter is to identify victims of domestic violence and abuse and dating violence and abuse; to link those victims to services; and to provide protective or therapeutic services for those who choose to accept them.	Expands protection to include victims of domestic violence (not just spouse abuse), and adds dating violence. The new purpose is intended to link victims to services through education and referral by service providers, not by mandatory reporting.

<p>Duties of Professionals Under the Law</p>	<p><u>Mandatory Reporting</u>: Any person having reasonable cause to suspect that an adult has suffered abuse or neglect shall make a report to the Cabinet for Health and Family Services. This report was made regardless of wishes of the victim.</p>	<p><u>Mandatory Education & Referral</u>: If a professional has reasonable cause to believe that a victim has experienced domestic violence or dating violence, the professional shall provide the victim with information about the regional domestic violence program (KRS 209.160) or rape crisis center (KRS 211.600); and information on how to access protective orders.</p>	<p>The mandate is limited to professionals instead of 'any person.' "Professional" is defined in the law to mean a physician, osteopathic physician, coroner, medical examiner, medical resident, medical intern, chiropractor, nurse, dentist, optometrist, EMT, paramedic, licensed mental health professional, therapist, Cabinet employee, child care personnel, teacher, school personnel, ordained minister or the denominational equivalent, victim advocate, or any organization or agency employing any of these professionals.</p> <p>The current law also changes the requirement on professionals from mandatory reporting to a requirement for giving information to the victim. This responsibility is limited to cases where professionals have reasonable cause to believe that a client/patient with whom they have a professional interaction is experiencing domestic or dating violence. Information to assist professionals with this duty will be easily accessible on the website of the KCADV and regional domestic violence programs for downloading.</p>
	<p>Death of the adult does not relieve one of the responsibility for reporting to the Cabinet.</p>	<p>If a professional believes that the death of a victim is related to domestic violence or dating violence, the professional shall make a report to law enforcement.</p>	<p>Only change is to whom reports go in the case of a death (law enforcement instead of Cabinet)</p>

Circumstances Under Which Mandatory Reporting Continues	Cases of known or suspected child abuse	Nothing in the bill relieves a professional's duty pursuant to KRS 620.030 to report to the Cabinet, a law enforcement officer, or prosecutor, any known or suspected abuse, neglect, or dependency of a child.	No change
	Cases of elder abuse or abuse of other vulnerable adults	Nothing in the current law relieves a professional's duty pursuant to KRS 209.030 to report known or suspected abuse, neglect, or exploitation of an adult who, because of mental or physical dysfunction, is unable to manage his or her own resources, carry out the activity of daily living, or protect himself or herself from neglect, exploitation, or a hazardous or abusive situation without assistance from others.	No change
	Upon receipt of a report, the Cabinet shall notify the appropriate law enforcement agency, if indicated.	At the request of a victim, a professional shall report to a law enforcement agency. No report to law enforcement shall be made over the objections of a victim.	Reports are made to law enforcement under current and proposed law; but with new proposal, only if a victim agrees. By making the report to law enforcement mandatory if requested by the victim, this allows professionals to make that report without risk to their licensure.

Law Enforcement		If a police officer receives a report of dating violence or domestic violence, the officer shall use all reasonable means to ensure that a victim receives assistance as provided in KRS 403.785(2)	This language simply restates duties that already exist in statute under KRS 403.785.
	Each law enforcement agency shall report all incidents of actual domestic violence and abuse within their knowledge to the Cabinet for Health and Family Services, Department for Community-Based Services, within 48 hours of learning of the incident or of the suspected incident.		In the same way that mandatory reporting to the Cabinet is no longer a duty of professionals, current law removes that duty from law enforcement. Law enforcement duties related to domestic violence or dating violence are those as provided in KRS 403.785(2).
		If a police officer receives a report of dating violence or domestic violence, the officer shall use a JC-3 form; the domestic violence sheet from that form shall remain with the agency of the police officer; pages from the JC-3 on child or elder abuse shall continue to go to the Cabinet.	This language codifies current practice of law enforcement except that if the JC-3 includes only information related to a domestic violence case, the form shall not be forwarded to the Cabinet.

Privilege	Neither the psychiatrist-patient privilege nor the husband-wife privilege shall be grounds for excluding evidence regarding abuse, neglect, or exploitation of an adult or the cause thereof in any judicial proceeding resulting from a report made pursuant to this chapter.	Neither the psychotherapist-patient privilege nor the husband-wife privilege shall be grounds for excluding evidence regarding domestic violence or dating violence or the cause thereof in any judicial proceeding resulting from a report made pursuant to this chapter.	The changes simply update the language in this section to that found in the Kentucky Rules of Evidence (KRE 507).
Immunity	Anyone acting upon reasonable cause in the making of any report shall have immunity from any civil or criminal liability that might otherwise be incurred or imposed.	Anyone acting upon reasonable cause in complying with the provisions of this chapter shall have immunity from any civil or criminal liability that might otherwise be incurred or imposed.	No change
Penalty for Violation of the Provisions of the Law	Anyone who knowingly or wantonly fails to comply with this statute shall be guilty of a Class B misdemeanor	Anyone who knowingly or wantonly fails to comply with this statute shall be guilty of a Class B misdemeanor	No change
Other Provisions in Current Law			

<p>Marriage License Fee to Support Domestic Violence Programs</p>	<p>There is a trust and agency account in the Treasury into which county clerks shall remit \$10 from the issuance of marriage licenses. The Cabinet for Health and Family Services shall use the funds for the purpose of providing protective shelter services for domestic violence victims (currently under KRS 209).</p>	<p>There is a trust and agency account in the Treasury into which county clerks shall remit \$10 from the issuance of marriage licenses. The Cabinet for Health and Family Services shall use the funds for the purpose of providing protective shelter services for domestic violence victims.</p>	<p>This provision is current law in a different chapter and is just moved here.</p>
<p>Designation of Primary Service Provider</p>	<p>The Cabinet shall designate one nonprofit corporation in each area development district to serve as the primary service provider for domestic violence services in the region (currently under KRS 209).</p>	<p>The Cabinet shall designate one nonprofit corporation in each area development district to serve as the primary service provider for domestic violence services in the region.</p>	<p>This provision is current law in a different chapter and is just moved here.</p>
<p>Confidentiality of Domestic Violence Program Records</p>	<p>All records, requests for services, and reports that contain information that identifies a current or former client of a domestic violence program are confidential and shall not be disclosed by any person except as provided by law. The Cabinet shall have access to client records, requests for services, and reports related to any domestic violence program for the limited purpose of monitoring the program.</p>	<p>All information that identifies a current or former client of a domestic violence program is confidential and shall not be disclosed by any person except as provided by law. The Cabinet shall have access to client information related to any domestic violence program for the limited purpose of monitoring the program.</p>	<p>This provision is current law in a different chapter and is just moved here. There are slight wording changes, but nothing substantive.</p>