



Kentucky Coalition
Against Domestic Violence
KCADV

Frequently Asked Questions

KRS 209A, Amended by HB 309, June, 2017

I. Overview: What's new? What changes does HB 309 make to the law?

House Bill 309 institutes the following 8 changes:

1. **Expands protection to include all victims of domestic violence, including intimate partner and dating violence** (instead of addressing only spouse abuse). This change to the law reflects the laws and protections as defined in protective order statutes.
2. **Provides immediate information and referrals to all victims:** The purpose of HB 309 is to link victims directly to domestic violence services through education and referral by service providers. The change to the bill ensures timely information and local referrals to victims at the time of disclosure, rather than creating an additional step of reporting to the Cabinet to Health and Family Services (CHFS) for them to then contact the victim at a future point with information on services.
3. **Narrows the scope from universal (all persons) to key professionals, most likely to be in a position of trust. *Kentucky was the only state to have a universal mandatory reporting law.*** The new 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.
4. **Establishes professional settings of responsibility.** HB 309 limits responsibility 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.
5. **Requires reporting to law enforcement any relevant information on the death of victim of domestic violence.** 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. This change recognizes the need for timely information to be shared with law enforcement by permitting professionals to share confidential information as needed.

6. **Strengthens the work of Law Enforcement.** Law enforcement duties related to domestic violence or dating violence are now the same as those provided in KRS 403.785(2). HB 309 requires law enforcement to complete a JC-3 for all incidents of domestic or dating violence, and to keep a copy of the JC-3 on file at their agency. If the form only includes information related to a domestic or dating violence case, without co-occurring child or vulnerable adult abuse/neglect, the form shall not be forwarded to the CHFS.
7. **Supports the work of CHFS. Law enforcement and professionals still have the duty to report suspected child abuse/neglect/dependency and the abuse/neglect/exploitation of "vulnerable" adults with a mental or physical disability to CHFS.** The changes to KRS209A allow CHFS to focus its resources on mandatory reports of child abuse/neglect/dependency, as well as the abuse/neglect/exploitation of vulnerable adults, while also allowing victims of domestic violence and dating violence to receive the information and referrals they need at the time of disclosure.
8. **Empowers victims! Encourages victims to disclose.** A report of domestic or dating violence and abuse shall be made to law enforcement by a professional if a victim requests it. By making the report to law enforcement mandatory only if requested by the victim, this allows professionals to make that report without risk to their licensure. By eliminating mandatory reporting to CHFS without a victim's informed consent, and by providing educational material and referral information to victims, HB309 empowers victims to decide when it's safe and appropriate for them to seek protective services from providers.

II. Why was the law changed?

Updates a law from 1978 to better serve victims' needs

The mandatory reporting law related to spouse abuse (domestic violence) was passed by the Kentucky General Assembly in 1978, and was designed to take the burden off victims for reporting, increase access to protective services for victims, communicate that the state thinks that domestic violence is wrong and to help provide for data collection to help create policy and programming. It worked as it was intended to at that time.

Recognizes the growth in domestic violence programs across the state

In 1978 when the law was passed, there was one domestic violence program in Kentucky. The Cabinet for Health and Family Services was the primary service provider for domestic violence cases. However, over the past four decades, the system of domestic violence service provision in the state has changed dramatically. Today there are fifteen regional domestic violence programs, one in every area development district, and by

statute these programs are now designated as the primary domestic violence service providers in Kentucky.

Establishes more efficient and effective method for connecting victims to services

The majority of victims are now receiving services through the regional domestic violence programs and not through CHFS. Recent analysis of CHFS data shows that most mandated reports of spouse abuse did not result in the victim receiving services or referrals from CHFS. For a variety of reasons, CHFS was not able to contact many victims and it is unknown what information such victims may or may not have received about how to access services in their community.

Empower victims

Fewer victims 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 (old) mandatory reporting law (Jordan & Pritchard, 2016; Sullivan & Hagen, 2005). 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). Professionals too expressed concern that being mandated reporters had a chilling effect on their relationship with their client/patient and that they felt it could increase risk of harm for some victims if a report had to be made.

Respond to victims in a timely, confidential, and safe manner

The newly revised KRS 209A seeks to link victims to services in a more timely, efficient, effective, empowering, confidential, and safe manner. Information about domestic and dating violence, how to access local resources, and how to access protective orders will be given directly to victims by professionals in the privacy of the setting of the disclosure of abuse. Victims will be empowered to use this information when they feel it is safe and appropriate for them to do so.

How does Kentucky law compare with other states?

Only 3 states in the U.S. have a mandatory reporting law that is specific to domestic violence (Kentucky, Oklahoma, Arkansas). However, Kentucky was the only state which had NO exceptions to the reporting law under the previous model; all other states allow for the victim to choose if they do or do not want the abuse to be reported, and if it is reported, that report goes to law enforcement, not social services.

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.

III. What are my responsibilities as a professional?

• What information needs to be provided?

KCADV has posted on its website materials for professionals to use and give to victims to satisfy the requirements of HB 309. A brochure has been developed to meet the three information requirements by providing:

1. information on domestic violence and abuse and dating violence and abuse
2. information about how to access regional domestic violence programs and rape crisis centers
3. information about how to access a protective order

To access the brochure, and other resources for victims, go to www.kcadv.org. On the left side, you will see a link for "KRS 209A Referral Information" which will take you to the resource page. The brochure is entitled "Help Is Here."

This information will also be featured on local domestic violence program websites and rape crisis centers' websites. Local domestic violence programs and rape crisis centers may provide more localized information and resources in their materials.

KCADV is in the process of producing an accessible format version of the brochure for persons with vision-based disabilities. Additionally, the brochure will be available in a variety of languages

Please note that education is only a part of a professional's responsibility. "Identifying" victims (screening), education, referral and documentation are needed to complete the compliance cycle that an organization should be able to demonstrate.

- **Am I required to provide mandatory education material and make a referral outside of work as well?**

A professional is required to give the educational material only to victims with whom they have a professional interaction. However, there is not a definition in the statute of "professional interaction", and this may vary from profession to profession. Seeking guidance from legal counsel is recommended.

It should also be noted that as long as a professional acts in good faith and upon reasonable cause, in compliance with the new law, then the professional should have immunity from civil or criminal liability. Compliance with a written protocol outlining an organization's procedure would be helpful in showing good faith.

KCADV hopes that professionals take this obligation seriously and try in good faith to comply with the new law. Ultimately the goal is to get information in the hands of victims in a timely and safe manner and in a way in which they can choose when it's safe and appropriate to access services. The goal is for more victims will be linked with services and get the help they need in order to address the violence in their lives.

- **Which professionals have a requirement to comply with the mandatory referral and education requirements of HB 309?**

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.

- **Do you have any draft policies for employers regarding this new requirement?**

KCADV and its member programs are available to work with collaborating agencies to draft a working policy that can be used to address the requirements for professionals. KCADV recommends a policy that contains the following sections: 1) Identifying victims of domestic violence (Screening), 2) Compliance via STAR referrals and brochure dissemination, and; 3) Documentation of an identified procedure for each patient/client.

KCADV strongly suggests employing a screening process that asks ALL patients/clients about the dynamics of domestic violence in order to demonstrate due diligence and compliance with the new requirements, documents the information given/shared, and the referral requested/provided. Please contact KCADV staff to request technical assistance with developing a procedure for your organization.

Please note that supplemental training may be necessary and/or helpful in developing a policy and procedure that will address the intricacies of working with victims of domestic violence.

- **What will law enforcement officers' role be when responding to domestic violence?**

Law enforcement will respond to incidents of domestic and dating violence as usual. However, they will no longer report all domestic violence to CHFS. They will fill out a JC-3 for domestic violence, dating violence, child abuse/neglect/dependency, or the abuse/neglect/exploitation of a "vulnerable adult" with a disability. The JC-3 will always be kept on file at the officer's agency. It will be forwarded to CHFS if there is child abuse/neglect/dependency or "vulnerable adult" abuse/neglect/exploitation involved/suspected. Officers will inform victims of their rights under KRS 421.500, including how to access emergency and protective services.

IV. Child Abuse Reporting

- **Are there any changes to mandatory reporting of child abuse?**

No. HB 309 does NOT change anything about mandatory reporting of child dependency/abuse/neglect.

Under KRS 620.030 – ANY person having reasonable cause to believe a child is dependent/neglected/abused, shall immediately report orally or in writing to: local law enforcement, KSP, CHFS, Commonwealth Attorney, or County Attorney.

If you believe a child is being abused, neglected, or is dependent, please call the Child Protection Hotline:

Child Protection Hot Line: 1-877-597-2331

V. Ensuring accountability for violence: preserving and supporting the non-offending parent-child bond

- **What necessitates a report to CPS when a child is in a home with DV?**

The presence of a child in the home in situations of domestic violence and abuse or dating violence and abuse (between the adults) in and of itself does not constitute child abuse. Additional screening for risks can inform when filing a report is mandated.

In order to not penalize victims of domestic violence, viewing non-offending parent and the child as a unit is important. Often, what is in the best interest of the non-offending parent is actually what is in the best interest of the child.

To always make a report of suspected child abuse when there is domestic violence in a home (between the adults) can play right into the hands of the batterer. One threat that batterers often make is that if the victim tells anyone about the domestic violence, CHFS will take the child away. It places the victim in an almost untenable position, as the batterer is frequently right. Upon the disclosure of abuse, CHFS steps in and removes the child or holds the non-offending parent accountable for the violence in the home. Removal can have devastating effects on children. We encourage professionals and law enforcement alike to give some critical thought to what is going to best serve the child in such a situation. Certainly, if there are increased risk factors, action needs to be taken, and a report needs to be made.

Suggested practices for keeping children and families safe and intact

Provided the child is not in immediate danger, the following practices are recommended to ensure the well-being of the non-offending parent and their child:

- Accurately assess for the impact of exposure to domestic violence on the child
- Appropriately designate the batterer as being the source of violence in the family
- Assess for the batterer's interference in the non-offending parent's efforts to parent appropriately and to be protective
- Make appropriate referrals to services for the non-offending parent and the child
- Actively include children and non-offending parent in safety planning.
- Whenever possible, the goal of child protective services should be to keep children in their own homes with the non-offending parent.

- **Where can I learn more?**

For more information on Child Abuse and reporting, please visit the Kentucky Cabinet for Health and Family Services website chfs.ky.gov . Their website notes the following:

The online Kentucky Child/Adult Protective Services Reporting System is available for professionals to report non-emergency situations that do not require an immediate response from staff. The website is monitored from 8 a.m. to 4:30 p.m. Eastern time Monday through Friday. Reports will not be reviewed during evenings, weekends, or state holidays.

For information regarding reporting standards and investigation protocol, please review the Reporting Child Abuse and Neglect Booklet:
<http://chfs.ky.gov/dcbs/dpp/childsafety.htm>

Watch the CHFS produced video on recognizing and reporting child abuse here at http://media.education.ky.gov/video1/On-Demand2016/SB119_Training_8-19-2016.mp4

Please note: This FAQ is not intended to address every conceivable scenario where an individual may be considering when or how to report child abuse/neglect/dependency. Specific questions should be addressed to the Cabinet for Health and Family Services. When in doubt, we encourage individuals to contact CHFS and let an intake worker decide whether to take a report or not.