



Kentucky Coalition
Against Domestic Violence
KCADV

Changes to Kentucky's Law on Mandatory Reporting of Domestic Violence

KRS Chapter 209A as revised by HB 309, 2017

Purpose

To identify victims of domestic and dating violence and abuse, to link victims to services and to provide protective or therapeutic services for those who choose to accept them

What is domestic violence and abuse?

Physical injury, serious physical injury, stalking, sexual abuse or assault between family members (spouses, ex-spouses, parents/step-parents, children/step-children, grandparents, grandchildren) or members of an unmarried couple (people who live or have lived together or have a child in common)

What is dating violence and abuse?

Physical injury, serious physical injury, stalking, sexual abuse or assault between people who are in or have been in a dating relationship (a relationship of a romantic or intimate nature)

What is the definition of "victim" for purposes of the revised KRS Chapter 209A?

An individual who is or has been abused by a spouse or former spouse or an intimate partner (people who live or have lived together, or have a child in common, or are or have been in a dating relationship)

Who has a duty under the new law?

- Professionals (defined as: physician, osteopathic physician, coroner, medical examiner, medical resident, medical intern, chiropractor, nurse, dentist, optometrist, emergency medical technician, 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)
- Law Enforcement Officers

What duty does a professional have?

- If a professional has reasonable cause to believe that a victim with whom he or she has had a professional interaction has experienced domestic or dating violence and abuse, the professional shall provide the victim with educational materials related to domestic or dating violence and abuse including information about how he or she may access regional domestic violence programs or rape crisis centers and information about how to access protective orders
- Upon the request of a victim, a professional shall report an act of domestic or dating violence and abuse to law enforcement, after first discussing the making of such a report with the victim
- A professional shall also report to law enforcement his or her belief that the death of a victim with whom he or she had a professional interaction is related to domestic or dating violence and abuse

Where can a professional access the educational material and information?

www.kcadv.org

Should a professional still report suspected abuse/neglect/dependency/exploitation of children and vulnerable adults (those with a disability who are unable to protect themselves from abuse)?

Yes! KRS Chapter 209A doesn't change the mandatory reporting of abuse of children and vulnerable adults. Such suspected abuse should be reported to the Cabinet for Health and Family Services.

Is there any requirement to report spouse abuse/neglect to the Cabinet for Health and Family Services?

No! The revised KRS Chapter 209A does away with the mandatory reporting requirement, and replaces it with a broader mandatory education and referral requirement.

What are the duties of Law Enforcement?

- Upon receipt of a report of domestic or dating violence and abuse, an officer shall use reasonable means to provide assistance to the victim, including:
- An officer shall use the JC3 form to document information and injuries
- The completed JC3 shall be forwarded to the Cabinet for Health and Family Services if it includes information *on known or suspected child abuse or neglect or the abuse or neglect of an elderly or disabled adult*
- If the JC3 form includes information that only relates to a victim of domestic or dating violence the form shall not be forwarded to the Cabinet for Health and Family Services but shall be kept in the records of the law enforcement agency

What are the possible repercussions for 1) deliberately or 2) mistakenly failing to follow the new law?

- A professional knowingly or wantonly violating this law shall be guilty of a Class B misdemeanor
- Anyone acting upon reasonable cause in complying with this law shall have immunity from any civil or criminal liability

Can a professional report suspected domestic or dating violence and abuse to law enforcement without the permission of the victim?

No. The revised KRS Chapter 209A requires that the victim request that the report be made. There may also be other ethical and legal confidentiality requirements by which the professional may be bound. For example, for those who must comply with HIPPA, disclosures must be limited to those actually "required by law". If not required by law, the victim has the right to decide whether the report should be made.



MANDATORY REPORTING QUICK SHEET

CHILDREN:

- if you have reasonable cause to believe a child is abused/neglected/dependent/victim of human trafficking
- report to local police/sheriff, KSP, prosecutor, CHFS
- abused/neglected = health/welfare harmed by parent/guardian/persons exercising custodial control or supervision/person in position of authority or special trust
- all sexual abuse/exploitation/prostitution where victim is less than 16 and perp is 21 or older
- inflicts or allows to be inflicted: physical or emotional injury; creates or allows to be created risk of physical/emotional injury; engages in pattern of conduct rendering them incapable of caring for child's needs; continuously or repeatedly fails or refuses to provide care/protection; commits or allows to be committed or creates risk of sexual abuse/exploitation; does not provide adequate care/supervision/food/clothing/shelter/education; fails to make sufficient progress in court ordered case plan
- **Position of authority** means but is not limited to the position occupied by a biological parent, adoptive parent, stepparent, foster parent, relative, household member, adult youth leader, recreational staff, or volunteer who is an adult, adult athletic manager, adult coach, teacher, classified school employee, certified school employee, counselor, staff, or volunteer for either a residential treatment facility, a holding facility as defined in KRS 600.020, or a detention facility as defined in KRS 520.010(4), staff or volunteer with a youth services organization, religious leader, health-care provider, or employer
- **Position of special trust** means a position occupied by a person in a position of authority who by reason of that position is able to exercise undue influence over the minor.

VULNERABLE ADULT:

- 18 yrs or older who because of mental or physical dysfunctioning is unable to manage his/her own resources, carry out activity of daily life or protect him/herself from neglect/exploitation/hazardous/abusive situation
- report to CHFS (at the number above)
- abuse = infliction of injury, sexual abuse, unreasonable confinement, intimidation, or punishment resulting in physical/mental pain or injury
- neglect = where the adult is unable to perform/obtain the goods/services necessary to maintain health/welfare or deprivation of same by a caretaker

- exploitation = obtaining/using the adult's resources by deception, intimidation or similar means

DUTY TO WARN:

- actual threat of physical violence against clearly identified/reasonably identifiable victim or some specific violent act
- made to a qualified mental health professional
- MD, psychiatrist, psychologist, psychiatric RN, LCSW w/3 yrs experience and currently employed by a mental health provider, marriage/family therapist, professional counselor
- Reasonable efforts to warn victim, police or seek civil commitment
- Juveniles – duty extends to those acting in counselor role

HIPPA allows for mandatory reporting 45 CFR 164.512(c)

Mandatory reporting is a “permitted disclosure” under HIPAA

- However, disclosures must be limited to those actually “required by law”

If not required by law, individual has the right to decide whether the report

- Need Authorization for Release of Information

Kentucky does NOT require reporting of all crimes of abuse or all rapes.

- Therefore, if you must be HIPAA Compliant, be sure to
 - determine whether reporting is mandatory or, if not
 - get authorization to release information prior to reporting.

Responding to information about abuse and neglect

- Listen and BELIEVE.
- Do not investigate, if it isn't your job to do so.
- Determine if reporting is required by law.
- Make the report immediately, if required by law or requested by the victim.
- Do so in the safest way possible for the victim/safety planning/referrals
- Identify resources, for the victim and yourself.
- Continue to interact with the victim as normally as possible and provide support.
- Reporting is often a beginning, not an end!
- Victims often need more support and advocacy after a report is made.

KY ABUSE HOTLINE: 1 877 597 2331