

HB 309 Mandatory Reporting/ Referral Requirements For Professionals: Domestic/Dating Violence, Child Abuse, and Vulnerable Adult Abuse



Welcome!

- We will be on mute because there are many of us here
- PLEASE add your questions to the chat box, we can export them and answer them in an FAQ resource that we will send out/post
- Certificates will be emailed at the end of this webinar. CEUs are available for Psychologists, LPCs and Social Workers
- Contact information at the end - feel free to message us!



Objectives

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- Gain understanding of the new mandatory education and referral requirements of HB 309;
- Review existing requirements regarding mandatory reporting of child abuse and vulnerable adult abuse;
- Expand understanding of domestic violence services and resources;
- Provide information on how to use screening tools and make referrals to reduce risk/harm from domestic violence.



Agenda

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- I. Overview of HB 309 -Requirements for Professionals and Law Enforcement
- III. Mandatory Reporting Laws in Kentucky
 - Child Abuse/Neglect
 - Vulnerable Adult Abuse/Neglect/Exploitation
 - Duty To Warn
- IV. Practical Compliance, Strategies and Resources
 - Screenings
 - Referral Making
 - Resources
- VI. Additional Information



Thank You!

Supporters of HB309/SB86 Domestic Violence & Dating Violence Education & Referral Act

- ★ Sen. Ralph Alvarado - Clark, Fayette and Montgomery counties (sponsor)
- ★ Rep. Melinda Prunty - Hopkins and Muhlenburg Counties (sponsor)
- Cabinet for Health & Family Services' Department for Community-Based Services
- Children's Alliance
- Homeless & Housing Coalition of Kentucky
- Kentucky Association of Criminal Defense Lawyers
- Kentucky Association of Sexual Assault Programs
- Kentucky Coalition Against Domestic Violence
- Kentucky Coalition of Nurse Practitioners and Nurse Midwives
- Kentucky Commonwealth Attorneys Association
- Kentucky County Attorneys Association
- Kentucky Equal Justice Center
- Kentucky Justice and Public Safety Cabinet
- Kentucky Medical Association
- Kentucky Mental Health Coalition
- Kentucky Psychological Association
- Kentucky Voices for Health
- Kentucky Youth Advocates
- National Alliance on Mental Illness Kentucky
- Prevent Child Abuse Kentucky



KY Mandatory Reporting Laws

- KRS 209A: Spousal abuse/neglect - major changes go into effect June 29, 2017
- KRS 620: Child dependency/abuse/neglect
- KRS 209: "Vulnerable" adult abuse/neglect/exploitation
- KRS 202A/645: Duty to Warn (only applies to certain professionals)



Spousal Abuse/Neglect

- KRS 209A- This chapter will change dramatically as of June 29, 2017
- Duty to report will be replaced by duty to provide educational material and information!
- Expanded to cover all victims of IP domestic and dating violence (as defined in protective order statutes)



KRS 209A until 6/29/17

- Universal duty to report spouse abuse/neglect
- KRS 209A.020(4): Adult = person regardless of age who is victim of abuse/neglect by spouse
- KRS 209A.030(2)
 - Any person
 - Having reasonable cause to suspect
 - That an adult has suffered abuse/neglect
 - Shall report
 - To CHFS
 - Penalty: class B misdemeanor



Purpose of 209A: Then and Now

- Current: Identify victims of DV inflicted by a spouse and provide protection for those who choose to access services
- New: Identify victims of DV and dating violence, link those victims to services and provide protective or therapeutic services to those who choose to accept them



Why was HB 309 necessary?



Changing Landscape of Service Provision

- In 1978 (when the first mandatory reporting law was passed) CHFS was the protective services provider for children and adults; awareness around DV and lack of resources was a significant barrier for victims trying to leave an abusive partner
- Since then, KY has gone from having one DV shelter to 15 regional domestic violence programs; there is one in each Area Development District; they provide not only shelter but an array of services to residents and non-residents alike, as well as staffing 24 hour crisis lines
- KCADV regional domestic violence programs are now designated by statute to be the primary domestic violence service providers in each ADD and they are contracted by CHFS to provide these critical services to victims and their children; victims desiring DV services are referred to these programs by APS workers



Empowering Victims and Encouraging Disclosure

- 35-50% of victims surveyed would be less likely to disclose abuse to a provider if they knew it had to be reported to CHFS
- KY is the only state to have a universal reporting law that requires reporting even against the victim's wishes
- Mandated reporting of abuse when the victim is still with the abuser can increase risk of harm



Fostering Therapeutic Relationships

- Many therapists state that having to make a report of spouse abuse to CHFS made their clients fearful of risk of further harm
- Mandated reporting against a client's wishes typically damages the therapeutic relationship
- Most therapists are already making referrals to local DV programs and RCCs



CHFS Data

- CHFS data indicates the majority of mandated reports are not resulting in victims being linked to services
- In 2012, 40,000 reports were received
- Approximately 50% were not investigated because APS could not locate or contact the victim
- Of the 50% who were contacted, approximately half did not wish to receive services
- Very few substantiated cases result in ongoing protective services being provided by CHFS:
- As of 10/2012 there were approximately 40 open DV cases (as opposed to approx. 13,000 open child protection cases)



KRS 209A, as of June 29, 2017

If a professional has reasonable cause to believe that a victim with whom he or she has had a professional interaction has experienced domestic violence and abuse or dating violence and abuse, the professional shall provide the victim with educational materials related to domestic violence and abuse 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



Who will have a duty under the new law to provide information?

Physician, osteopathic physician, coroner, medical examiner, medical resident, medical intern, chiropractor, nurse, dentist, optometrist, emergency medical technician, paramedic, licensed mental health professional, therapist, CHFS employee, child care personnel, teacher, school personnel, ordained minister or denominational equivalent, victim advocate or organization/agency employing any such professional



What is the definition of “victim”?

- An individual who is or has been abused by a spouse, former spouse, or intimate partner with whom they live or have lived, or have a child in common
- An individual who is or has been abused by a dating partner (dating relationship is defined as one of a romantic or intimate nature)



What is the definition of abuse?

- Physical injury, serious physical injury, stalking, sexual abuse, or assault or the infliction of fear of imminent physical injury, serious physical injury, sexual abuse or assault



What information will be given and how will it be accessed?

- Educational material and information about how to access regional programs and protective orders will be housed on the KCADV website: www.kcadv.org
- Information will also be housed on member program and RCC websites
- It will be in easily downloadable form so professionals can print and hand to client



Professional Response to DV

- There will be no more reporting of spouse abuse to CHFS
- Professionals may report to law enforcement if the victim requests it and after discussing report with the victim
- Professionals shall report to law enforcement their belief that a death of a victim with whom they had a professional interaction is related to domestic/dating violence
- Anyone acting upon reasonable cause in compliance with this chapter shall have immunity from civil/criminal liability
- Knowing or wanton violation shall be a class B misdemeanor



Duties of Law Enforcement

- Upon receipt of a report of domestic/dating violence. L.E. officer “shall use reasonable means to provide assistance” per KRS 403.786/456.090:
- Remaining at location so long as there is danger to physical safety of victim
- Assisting victim to obtain medical treatment including transportation
- Advise victims of their rights under KRS 421.500- ensure that victims receive information on available protective, emergency, social and medical services



JC-3s

- Use to document information/injuries
- To be kept in L.E. agency's records
- Forward copy to CHFS only if there is suspected child dependency/abuse/neglect or vulnerable adult abuse/neglect/exploitation
- No longer a blanket requirement to report all “domestic violence” to CHFS



HB 309 does not change anything about the mandatory reporting of child dependency/abuse/neglect or vulnerable adult abuse/neglect/exploitation!



Child Dependency/ Neglect/ Abuse

- KRS 620.030 – **ANY** person having
 - Reasonable cause to believe child is dependent/neglected/abused
 - Shall immediately report orally or in writing to: local law enforcement, KSP, CHFS, Commonwealth Attorney, or County Attorney



Child Dependency

Dependent child: any child, other than an abused or neglected child, who is under improper care, custody, control, or guardianship that is not due to an intentional act of the parent, guardian, or person exercising custodial control or supervision of the child



Exceptions

- KRS 602.050(3)
 - Attorney-client privilege
 - Clergy-penitent privilege



Abused/ Neglected Child

- "Abused or neglected child" means a child whose health or welfare is harmed or threatened with harm when his parent, guardian, person in a position of authority or special trust, or other person exercising custodial control or supervision of the child:



"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.
- Both definitions are in KRS 532.045



Definition: Abuse/Neglect

- (a) Inflicts or allows to be inflicted upon the child physical or emotional injury as defined in this section by other than accidental means;
- (b) Creates or allows to be created a risk of physical or emotional injury as defined in this section to the child by other than accidental means;



Definition: Emotional Injury

- Injury to the mental or psychological capacity of a child as evidenced by a substantial and observable impairment in the child's ability to function within a normal range of performance and behavior with due regard to his or her age, development, culture and environment as testified to by a qualified mental health professional



Definition: Abuse/Neglect

- (c) Engages in a pattern of conduct that renders the parent incapable of caring for the immediate and ongoing needs of the child including, but not limited to, parental incapacity due to alcohol and other drug abuse as defined in KRS 222.005;
- (d) Continuously or repeatedly fails or refuses to provide essential parental care and protection for the child, considering the age of the child;
- (e) Commits or allows to be committed an act of sexual abuse, sexual exploitation, or prostitution upon the child;
- (f) Creates or allows to be created a risk that an act of sexual abuse, sexual exploitation, or prostitution will be committed upon the child;
- (g) Abandons or exploits the child;



Definition: Abuse/Neglect

- (h) Does not provide the child with adequate care, supervision, food, clothing, shelter, and education or medical care necessary for the child's well-being. A parent or other person exercising custodial control or supervision of the child legitimately practicing the person's religious beliefs shall not be considered a negligent parent solely because of failure to provide specified medical treatment for a child for that reason alone. This exception shall not preclude a court from ordering necessary medical services for a child; or
- (i) Fails to make sufficient progress toward identified goals as set forth in the court-approved case plan to allow for the safe return of the child to the parent that results in the child remaining committed to the cabinet and remaining in foster care for fifteen (15) of the most recent twenty-two (22) months;
- These definitions of abused/neglected child are found in KRS 600.020



Also must report:

- Sexual abuse, exploitation or prostitution where the victim is less than 16 years old and the perpetrator is 21 or older
- Sexual abuse: use, allow, permit or encourage the use of the child for purpose of sexual stimulation of the perpetrator or another
- Also must report children who are suspected of being trafficked



PENALTY

- KRS 620.030(5)
 - Class B misdemeanor –first offense
 - Class A misdemeanor – second offense
 - Class D felony – subs. offenses
- Commonwealth v. Allen 1998
 - Teacher relayed report of sexual abuse of two students by another teacher to the school counselor and the principal. None of the three ever reported it further until the same teacher abused another child. Then the second occurrence along with the first two were reported to the police. The teacher, counselor and principal were all convicted under KRS 620 for failure to report.



Child Abuse Reporting

- The fact that a child's parent or guardian has been the victim of domestic violence is not in and of itself a sufficient basis for reporting suspected child abuse or neglect.
- A child's exposure to a domestic violence incident in and of itself is not a sufficient basis for reporting suspected abuse or neglect.
- In order to not penalize victims of domestic violence, viewing non-offending parent and the child/ren 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.

Adapted from:

- Oregon Department of Human Services: [Child Welfare Practices for Cases with Domestic Violence](#), 2010
- Child and Family Service Review Outcomes: [Strategies to Improve Domestic Violence Responses in CFSR Program Improvement Plans](#), written by Shellie Taggart, 2009.



Risk Factors to Consider

In determining high risk and the need for immediate response, professionals/law enforcement should consider the following as risk factors where domestic violence is present:

- Domestic violence related injuries to a non-offending parent and/or child.
- Risk to child and/or non-offending parent of being threatened, stalked, coerced, assaulted or kidnapped by perpetrator.
- Non-abusive parent forced to flee and leave children with perpetrator; Or non-abusing parent and children have fled, without a place to go.
- Adult victim unable to care for child due to the trauma of a recent assault or to the trauma from a series of multiple incidents.

Adapted from:

- Center for Relationship Abuse Awareness: Child Protective Services, Children and Relationship Abuse, 2015, available at:
 - <http://stoprelationshipabuse.org/professional-resources/child-protective-services/>
 - http://stoprelationshipabuse.org/pdfs/Mandatory_Reporting_and_DV.pdf
- Oregon Department of Human Services: [Child Welfare Practices for Cases with Domestic Violence](#), 2010.
- Child and Family Service Review Outcomes: [Strategies to Improve Domestic Violence Responses in CFSR Program Improvement Plans](#), written by Shellie Taggart, 2009.



Suggested Practices

Provided the child is not in immediate danger, the following practices are recommended to ensure the wellbeing of the non-offending parent and child(ren):

- Accurately assess for impact of exposure, domestic violence offender interference in non-offending parent parenting, and provide appropriate services
- Actively include children and non-offending parent in interventions and safety planning.
- Provide children counseling, recreational opportunities, and opportunities to feel accomplished.
- Whenever possible, the goal of child protective services should be to keep children in their own homes with the non-offending parent.

Adapted from:

- Center for Relationship Abuse Awareness: Child Protective Services, Children and Relationship Abuse, 2015, available at:
 - <http://stoprelationshipabuse.org/professional-resources/child-protective-services/>
 - http://stoprelationshipabuse.org/pdfs/Mandatory_Reporting_and_DV.pdf
- Oregon Department of Human Services: [Child Welfare Practices for Cases with Domestic Violence](#), 2010.
- Child and Family Service Review Outcomes: [Strategies to Improve Domestic Violence Responses in CFSR Program Improvement Plans](#), written by Shellie Taggart, 2009.



“Other Adult Abuse”

- KRS 209.020
 - ADULT = 18 YRS or older who because of mental or physical dysfunctioning is unable to manage his/her own resources, carry out the activity of daily life or protect him/herself from neglect, exploitation, hazardous, abusive situation
 - Any person having reasonable cause to suspect abuse/neglect/exploitation shall report to CHFS



KRS 209.020

- (8) "Abuse" means the infliction of injury, sexual abuse, unreasonable confinement, intimidation, or punishment that results in physical pain or injury, including mental injury;
- (9) "Exploitation" means obtaining or using another person's resources, including but not limited to funds, assets, or property, by deception, intimidation, or similar means, with the intent to deprive the person of those resources;
- (16) "Neglect" means a situation in which an adult is unable to perform or obtain for himself or herself the goods or services that are necessary to maintain his or her health or welfare, or the deprivation of services by a caretaker that are necessary to maintain the health and welfare of an adult; and



Duty to Warn

- KRS 202A.400/KRS 645.270 an actual threat of physical violence against a clearly identified or reasonably identifiable victim or an actual threat of some specific violent act
- Made to a qualified mental health professional
- Reasonable efforts to warn victim, police or seek civil commitment



"Mental Health Professional" Defined

- A physician licensed under the laws of Kentucky to practice medicine or osteopathy, or a medical officer of the government of the United States while engaged in conducting mental health services;
- A psychiatrist licensed under the laws of Kentucky to practice medicine or osteopathy, or a medical officer of the government of the United States engaged in conducting mental health services
- A psychologist, a psychological practitioner, a certified psychologist, or a psychological associate, licensed under the provisions of KRS Chapter 319;



"Mental Health Professional" (cont.)

- A registered nurse licensed under the provisions of KRS Chapter 314 engaged in providing mental health services;
- A licensed clinical social worker licensed under the provisions of KRS 335.100, or a certified social worker licensed under the provisions of KRS 335.080 engaged in providing mental health services;
- A marriage and family therapist licensed under the provisions of KRS 335.300 to 335.399 engaged in providing mental health services;



"Mental health professional" (cont.)

- A professional counselor credentialed under the provisions of KRS Chapter 335.500 to 335.599 engaged in providing mental health services;
- An art therapist certified under KRS 309.130 engaged in providing mental health services;
or;
- A fee-based pastoral counselor certified under the provisions of KRS 335.600 to 335.699 engaged in providing mental health services.



Screening - Why Screen?

Screening ensures that you are providing the correct service to the correct person, and have clearly identified the non-offending parent in order to improve child outcomes.

- Screening is essential in order to provide safe and effective services to survivors.
- For survivors, the correct services provide support, safety planning, validation, confidential shelter, resources, and legal help.
- Survivors may have been mistakenly perceived as the abuser by police and been arrested. Survivors may also present themselves to blame for incidents of violence, or may feel ashamed for fighting back in self defense and consider themselves abusive.
- For abusers, the correct services demand accountability, protect their partner, and offer legal repercussions for their abusive behaviors.
- Abusers may try to block their partner from using those services or trying to find their partner.
- Abusers may believe they are victims and try to access services that are intended for survivors, including shelter or legal services.

Open Minds Open Doors Manual, Transforming Domestic Violence Programs to Include LGBTQ Survivors, The Network/La Red 2010
http://www.ncdsv.org/images/TheNetworkLaRed_OpenMindsOpenDoors_2010.pdf



Screening - Keeping Victims SAFE

- Stress and safety**
 - Do you feel safe in your relationship?
- Afraid or Abused**
 - Has your partner ever hurt you/children and/or threatened you or your children? Are you afraid of your partner?
- Friends and Family**
 - If you were hurt, would your friends or family know? Would they be able to help you?
- Emergency Plan**
 - What would be most helpful in helping you stay as safe as possible?



Example Screening Language

- Because domestic violence has so many effects on health, I now ask everyone about it routinely.
- Violence affects many families. We are always willing to connect people who may be concerned about violence in their home to services.
- We ask all of our clients/patients the following question: Does a partner, or anyone at home, hurt, hit, threaten you or make you feel afraid?
- Do you have any other questions about this issue? I just want you to know that if anything like this ever does come up, this is a safe place to talk about it and get help.



KRS Chapter 209A, revised by HB 309, 2017

If a professional has reasonable cause to believe that a victim with whom he or she has had a professional interaction has experienced domestic violence and abuse or dating violence and abuse,

- ***the professional shall provide the victim with educational materials related to domestic violence and abuse 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***



Professional Responsibility

Requirements of the law

1. the professional shall provide the victim with educational materials related to domestic violence and abuse or dating violence and abuse
2. including information about how he or she may access regional domestic violence programs or rape crisis centers and
3. information about how to access protective orders

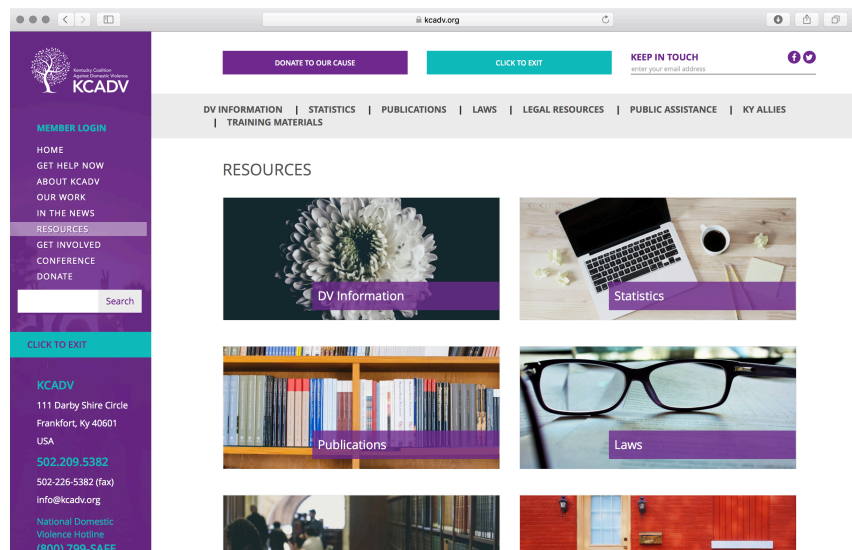
Strategies for Compliance

1. KCADV Website - www.kcadv.org
2. STAR Model
3. IPO Brochure



...educational materials

www.kcadv.org



...access regional programs



STAR Model

☑ SUPPORTIVE

- "I know my role in the face of my client/patient's need."
- "Supporting my client's decision is best way I can do my job helping them."

☑ THOROUGH

- "I have the correct information about the service my client needs."
- "I am knowledgeable about the care that is being sought."

☑ ACTIVE

- "I actively help my client/patient locate and schedule the needed care/services."
- "I actively assess my client's needs for, and help connect my client to, supportive services such as childcare or transportation—to help her to utilize the referral that my client is seeking."

☑ REFERRAL-QUALITY

- "I follow up, asking about my client's experience accessing this provider and if there is anything else my client needs."
- "I use my client's experience to better help the next client or patient seeking a referral."



...accessing protective orders

Protective order basics

What is a protective order?

It is a court order, signed by a judge, designed to prevent further acts of domestic violence, dating violence, sexual assault, or stalking.

The person who files the order is the petitioner, and the person filed against is the respondent.

What can a protective order do?

A judge can order the respondent to:

- Have no contact with you, your children, or others who might need protection either in person, by phone, text, email, social media, or through friends or family
- Stay away from your home, school, workplace, or other places you may likely be
- Stop abusing or threatening you
- Leave a shared home

If you have children in common, the court may give you temporary custody and set up a visitation schedule, or order child support.

The two types of protective orders

Interpersonal Protective Orders

Who can file for an Interpersonal Protective Order?

- People who are, or have been, in a dating relationship
- People who have been sexually assaulted
- People who have been stalked

How do I get a protective order?

You have to show the court that you were physically injured, assaulted, sexually assaulted, or stalked by the respondent OR that the respondent did something to place you in a reasonable fear that you were about to be physically injured, assaulted, sexually assaulted, or stalked.

Where do I go to get a protective order?

You should go to the Circuit Court Clerk's office – either in the county where you usually live or in the county to which you have fled to escape the abuse. After business hours, you should contact your local police or domestic violence program to find out what to do. Protective orders are available 24 hours per day, every day!

Domestic Violence Orders

Who can file for a Domestic Violence Order?

- Family members (e.g., spouses, ex-spouses, parents, children, grandparents, grandchildren)
- Couples who have lived together
- Couples who have a child together

Kentucky Coalition Against Domestic Violence
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Our mission

The mission of the Kentucky Coalition Against Domestic Violence is to mobilize and support member programs and allies to end intimate partner violence.

Domestic Violence services are funded, in whole or in part, from federal and state funds provided by the Cabinet for Health and Family Services through a contract with KCADV.

This publication was made possible by the Kentucky Bar Foundation.



Interpersonal Protective Orders

Kentucky's new tool to protect survivors of dating violence, sexual assault, and stalking



Additional Resources

- **Domestic Violence**

- www.nnedv.org
- www.futureswithoutviolence.org
- www.kcadv.org

- **Teen Dating Violence**

- www.breakthecycle.org

- **Stalking**

- www.outrageUs.org
- www.victimsofcrime.org/src

- **Sexual Violence**

- www.rainn.org
- www.nsvrc.org
- www.kasap.org

- **Children and Domestic Violence**

- www.chfs.ky.gov
- www.promising.futureswithoutviolence.org
- www.changingmindsnow.org
- www.defendingchildhood.org
- www.ncjfcj.org/resource-library
- https://www.rcdvcpc.org/index.php?option=com_mtree&task=att_download&link_id=71&cf_id=39
- (downloadable version of the “Greenbook” – “Effective Interventions in Domestic Violence and Child Maltreatment Cases: Guidelines for Policy and Practice”)

- Other information?



Contact Information

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