

OPSVAW Research Aids 2017 Legislative Reform on Domestic Violence

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The 2017 General Assembly passed SB 86 (sponsored by Senator Ralph Alvarado) to amend the domestic violence mandatory reporting law in Kentucky.¹ Prior to passage of this legislation, “any person” was statutorily mandated to report to the Cabinet for Health and Family Services any known or suspected cases of domestic violence. The purpose of the new legislation, a priority for the Kentucky Coalition Against Domestic Violence, was to remove the mandatory reporting requirement pursuant to KRS 209A, replacing it with mandatory education and referral duty for professionals. The new law became effective June 29, 2017.

Background

The initial law that mandated the reporting of known or suspected domestic violence was passed in 1978. Passage of that legislation made Kentucky the first state in the nation to institute a mandatory reporting law for domestic violence cases. Since the law’s passage, two other states (Oklahoma and Arkansas) have also adopted stand-alone domestic violence mandatory reporting laws, but in both cases, the law applies only to health care providers, and there are exceptions to the mandate if the victim does not wish a report to be made). Kentucky’s law has also been unique in that mandatory reports were directed to the state’s adult protective services agency, the Cabinet for Health and Family Services, rather than law enforcement. Finally, the majority of states (46) do not have stand-alone domestic violence reporting statutes, but do have so-called crime injury reporting laws which place a responsibility on health care providers to report to law enforcement injuries that result from criminal behavior or from a firearm or other specific weapon. Of the states with crime-injury reporting laws, two stipulate that domestic violence is included in their definition of crime-related injury (California and Colorado).

The Evolution in Views of Mandatory Reporting

The original purpose of Kentucky’s mandatory reporting law was very important at the time of the bill’s passage in the 1970s. The idea was to take the burden of reporting off of

¹ Prior to its passage, the bill was combined with another domestic violence bill (HB 309, sponsored by Representative Melinda Prunty), so the two bills were passed as a package under the HB 309 label.

domestic violence victims, and to increase access to protective services for victimized families. Those who proposed the original mandatory reporting law were also responding to the fact that in 1978 there was only one state-funded domestic violence program (shelter), meaning that the Cabinet for Health and Family Services was the primary state resource for domestic violence cases. With that purpose, there was a good deal, but not unanimous, support for creation of the mandatory reporting law (Jordan, 2014).

Over time, however, a significant number of domestic violence advocates began to criticize the law's impact on victims of domestic violence. First, a review of mandatory reporting data from the Kentucky Cabinet for Health and Family Services raised a question as to whether the law's purpose of increasing protective services to women was being realized. In 2012, for example, the Cabinet received approximately 40,000 reports of domestic violence (spouse abuse).

- Approximately 50% of those reports were not investigated because the Cabinet could not locate or 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 reported that there were approximately 40 open domestic violence cases while there were approximately 13,000 open child protection cases².

Another concern has been the findings of research suggesting that, instead of encouraging battered women to reach out for help, mandatory reporting laws actually depress the rate by which victims come forward. For example, studies have found that 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 that a mandatory reporting law will be applied to their case (e.g., Jordan & Pritchard, manuscript submitted for publication; Sullivan & Hagen, 2005). One study also showed that mandatory reporting laws did not increase reports to law enforcement (Sachs, Peek, Baraff Hasselblad, 1998).

² *Data Source: Cabinet for Health and Family Services, 2012*

In a survey with 388 women receiving services from Kentucky domestic violence shelters, researchers found that when women were asked whether they would disclose their abuse if they knew their case would be reported to the 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 (Jordan & Pritchard, manuscript submitted for publication).

Mandatory Reporting Changes to Mandatory Education and Referral

With the above concerns, legislation was introduced to the 2017 General Assembly to restructure the state domestic violence protective services system: The bill was introduced by Senator Ralph Alvarado and went into effect June 29, 2017.

A New Concept for KRS 209A: Mandatory Education & Referral

Purpose: identify victims of domestic or dating violence; link them to services; provide protective or therapeutic services to those who wish them.

Advantages of the new law:

- Increase likelihood that victims would disclose to their local domestic violence program, doctor, nurse, or therapist.
- Includes not only domestic violence (KRS 403.720(2)(5)), it adds dating violence (KRS 456.010(2)) to KRS 209A for the first time.
- Duty under the statute would apply to professionals as defined in the bill, not to “any person.”
- ***Professionals are defined to mean: a 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.***
- Duties on professionals include:

- If a professional has reasonable cause to believe that a victim with whom she or he has had a professional interaction (e.g., as a patient or client) has experienced domestic (KRS 403) or dating (KRS 456) violence and abuse, the professional shall provide the victim with educational materials related to domestic or dating violence and abuse. Information shall include:
 - How to access regional domestic violence programs or rape crisis centers and information; and
 - How to access a domestic violence protective order (KRS 403) or an interpersonal protective order (KRS 456).
 - Information to aid professionals in complying with this duty can be found at www.kcadv.org.
 - The National Domestic Violence Hotline can be reached at 800-799-SAFE (7233).
 - Location of the nearest rape crisis center can be found 24-hours a day by contacting the RAINN hotline at 800-666-HOPE (4673) or at: www.kasap.org.
 - Professionals may also contact their regional domestic violence program or rape crisis center directly.
- Upon the request of a victim, a professional shall report an act of domestic or dating violence and abuse to law enforcement. The report to law enforcement shall only be made after discussing the 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.
- If a police officer responds to a domestic violence call, he or she shall continue to use the Justice Cabinet's JC-3 form;
- The law has immunity provisions for professionals who make reports;
- Violation of the provisions of the new law is a Class B misdemeanor;
- Notwithstanding passage of the new law for domestic violence cases, every person will continue to have a duty to report:
 - Child abuse pursuant to KRS 620.030
 - Abuse of vulnerable adults pursuant to KRS 209.030