

## CHAPTER 191

( HB 309 )

AN ACT relating to domestic relations.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

➔SECTION 1. A NEW SECTION OF KRS CHAPTER 383 IS CREATED TO READ AS FOLLOWS:

- (1) (a) *This section shall apply only to leases or rental agreements created or renewed on or after the effective date of this Act.*
- (b) *A person who is both a named individual and a protected tenant shall not be eligible for the protections under this section.*
- (2) *As used in this section:*
- (a) *"Named individual" means a person identified in the protective orders listed in paragraph (b) of this subsection as restrained from contact with the protected tenant; and*
- (b) 1. *"Protected tenant" means a residential rental or leased housing tenant, applicant for tenancy, or a tenant with a minor household member, who is protected by a valid:*
- a. *Domestic violence order issued pursuant to KRS 403.740 which restrains the adverse party from any unauthorized contact; or*
- b. *Interpersonal protective order issued pursuant to KRS 456.060 which restrains the adverse party from any unauthorized contact.*
2. *For purposes of subsections (3) and (4) of this section, "protected tenant" also means a residential rental or leased housing tenant, applicant for tenancy, or a tenant with a minor household member who is protected by a valid:*
- a. *Emergency protective order issued pursuant to KRS 403.730;*
- b. *Temporary interpersonal protective order issued pursuant to KRS 456.040; or*
- c. *Pretrial release no contact order issued pursuant to KRS 431.064.*
- (3) (a) *A landlord shall not terminate, fail to renew, refuse to enter into, or otherwise retaliate in the renting or leasing of a residence because of the person's status as a protected tenant.*
- (b) *It shall be a defense to an action for possession of a rented or leased residential property if the court determines that:*
1. *The tenant is a protected tenant; and*
2. *The notice to vacate is substantially based on acts which violated the tenant's protective order or led to the issuance of a protective order listed in subsection (2) of this section, including an action for possession based on complaints of noise, disturbances, or repeated presence of peace officers.*
- (4) (a) 1. *After informing the landlord of an intention to install a new lock, a protected tenant at his or her expense, may install a new lock to his or her dwelling by:*
- a. *Rekeying the lock if the lock is in good working condition; or*
- b. *Replacing the entire locking mechanism with a locking mechanism of equal or better quality than the lock being replaced.*
2. *The tenant shall provide a key to the new lock to the landlord upon request.*
- (b) *Regardless of any provision in the lease or rental agreement, the landlord may refuse to provide a key to the new lock to a named individual, even if the named individual is a party to the lease or rental agreement.*

- (c) *A named individual who has been excluded from leased or rented property under this section remains liable for rent.*
- (5) (a) *For a protected tenant who obtains a valid protective order listed in subsection (2)(b)1. of this section after entering into a lease or rental agreement, the lease or rental agreement may be terminated by providing the landlord with:*
1. *Written notice of termination to be effective on a date stated in the notice that is at least thirty (30) days after the landlord's receipt of the notice; and*
  2. *A copy of the valid protective order.*
- (b) *For a protected tenant who obtains a valid protective order listed in subsection (2)(b)1. of this section before entering into a lease or rental agreement, the lease or rental agreement may be terminated by:*
1. *Providing the landlord with written notice of termination to be effective on a date stated in the notice that is at least thirty (30) days after the landlord's receipt of the notice;*
  2. *Attaching a copy of the valid protective order; and*
  3. *Demonstrating a safety concern to the landlord that arises after execution of the lease.*
- (c) *Upon termination of a lease or rental agreement under this section, the released protected tenant shall:*
1. *Be liable for the rent due under the lease or rental agreement prorated to the effective date of the termination and payable at the time that would have been required by the terms of the lease or rental agreement;*
  2. *Not receive a negative credit entry, a negative character reference, or be liable for any other rent or fees due solely to the early termination of the tenancy; and*
  3. *Not be subject to any damages or penalties if a lease or rental agreement is terminated under this subsection fourteen (14) or more days prior to occupancy.*
- (d) *Regardless of whether the named individual is a party to a lease or rental agreement terminated under this subsection, the named individual:*
1. *Is deemed to have interfered with the terminated lease or rental agreement between the landlord and tenant; and*
  2. *Shall be civilly liable for all economic losses incurred by the landlord for the early lease termination, including unpaid rent, early lease termination fees, commissions and advertising costs incurred in reletting the premises, costs to repair damages to the premises, or any reductions in rent previously granted to the protected tenant.*
- (6) *Regardless of conflicting provisions in a named individual's rental agreement or lease, if a named individual and a protected tenant are co-tenants, a landlord may:*
- (a) *Refuse access to the property by a named individual unless the named individual is specifically permitted access by court order; and*
- (b) *Pursue all available legal remedies against the named individual, including:*
1. *Termination of the named individual's rental agreement or lease;*
  2. *Eviction of the named individual, whether or not a lease or rental agreement between the landlord and the named individual exists; and*
  3. *Action for damages against the named individual for any unpaid rent owed by the named individual or any damages resulting from a violation of a valid protective order listed in subsection (2)(b)1. of this section.*
- (7) *Notwithstanding the release of a protected tenant or an exclusion of a named individual from a lease or rental agreement under this section, if there are any remaining tenants residing in the dwelling unit, the tenancy shall continue for those tenants.*
- (8) *A landlord is immune from civil liability if the landlord in good faith acts in accordance with this section.*

➔SECTION 2. A NEW SECTION OF KRS CHAPTER 383 IS CREATED TO READ AS FOLLOWS:

- (1) *A landlord shall not include in a residential rental agreement or lease for housing a provision authorizing the landlord to terminate the agreement or to impose a penalty on a tenant for requests made by the tenant for assistance from peace officers or other assistance in response to emergencies.*
- (2) *A residential rental agreement or lease provision prohibited by subsection (1) of this section is unenforceable. If a landlord enforces a rental agreement or lease containing provisions known by the landlord to be prohibited by this section, the tenant may recover actual damages sustained by the tenant, reasonable attorney's fees, and all other costs incurred in bringing the action, and punitive damages of not more than two (2) months of periodic rent.*
- (3) *This section shall apply only to leases or rental agreements created or renewed on or after the effective date of this Act.*

➔Section 3. KRS 209A.010 is repealed, reenacted, and amended to read as follows:

The purpose of this chapter is to identify victims of domestic violence ~~and~~ ~~abuse~~ *and dating violence and abuse, to link those victims to services* ~~for neglect inflicted by a spouse~~, and to provide *protective or therapeutic services for those who choose to accept them* ~~for the protection of adults who choose to access those services. A victim of domestic violence who has a mental or physical disability or who cannot carry out the activities of daily living or protect himself or herself without the assistance of others may be served under the provisions of KRS Chapter 209~~.

➔Section 4. KRS 209A.020 is repealed, reenacted, and amended to read as follows:

As used in this chapter, unless the context otherwise requires:

- (1) *"Cabinet" means the Cabinet for Health and Family Services;*
- (2) *"Dating violence and abuse" has the same meaning as in KRS 456.010;*
- (3) *"Domestic violence and abuse" has the same meaning as in KRS 403.720;*
- (4) *"Law enforcement officer" means a member of a lawfully organized police unit or police force of county, city, or metropolitan government who is responsible for the detection of crime and the enforcement of the general criminal laws of the state, as well as a sheriff, sworn deputy sheriff, campus police officer, law enforcement support personnel, public airport authority security officer, other public and federal peace officer responsible for law enforcement, special local peace officer appointed pursuant to KRS 61.360, school resource officer, public school district security officer, and any other enforcement officer as defined by law;*
- (5) *"Professional" means 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;*
- (6) *"Victim" means an individual who is or has been abused by a spouse or former spouse or an intimate partner who meets the definition of a member of an unmarried couple as defined in KRS 403.720, or a member of a dating relationship as defined in KRS 456.010; and*
- (7) *"Victim advocate" has the same meaning as in KRS 421.570* ~~"Secretary" means the secretary of the Cabinet for Health and Family Services;~~
- ~~(2) "Cabinet" means the Cabinet for Health and Family Services;~~
- ~~(3) "Department" means the Department for Community Based Services of the Cabinet for Health and Family Services;~~
- ~~(4) "Adult" means a person without regard to age who is the victim of abuse or neglect inflicted by a spouse;~~
- ~~(5) "Protective services" means agency services undertaken with or on behalf of an adult in need of protective services who is being abused or neglected. These services may include but are not limited to conducting investigations of complaints of possible abuse or neglect to ascertain whether or not the situation and condition of the adult in need of protective services warrants further action, including action under KRS Chapter 209, and social services aimed at preventing and remedying abuse or neglect;~~
- ~~(6) "Abuse" means the infliction of injury, unreasonable confinement, intimidation, or punishment resulting in physical harm or pain, including mental injury;~~

- (7) ~~"Investigation" shall include but is not limited to a personal interview with the individual reported to be abused or neglected. When abuse or neglect is allegedly the cause of death, a coroner's or doctor's report shall be examined as part of the investigation;~~
- (8) ~~"Records" means the medical or mental health records of the adult that are in the possession of any individual, hospital, firm, corporation, or other facility if necessary to complete the investigation mandated in KRS 209.030(5);~~
- (9) ~~"Neglect" means a situation in which a person deprives his or her spouse of reasonable services to maintain health and welfare; and~~
- (10) ~~"Authorized agency" means:~~
- (a) ~~The Cabinet for Health and Family Services;~~
  - (b) ~~A local law enforcement agency or the Department of Kentucky State Police; or~~
  - (c) ~~The office of a Commonwealth's attorney or county attorney}.~~

➔SECTION 5. A NEW SECTION OF KRS CHAPTER 209A IS CREATED TO READ AS FOLLOWS:

- (1) *Upon the request of a victim, a professional shall report an act of domestic violence and abuse or dating violence and abuse to a law enforcement officer.*
- (2) *A professional who makes a report under this chapter shall discuss the report with the victim prior to contacting a law enforcement officer.*

➔SECTION 6. A NEW SECTION OF KRS CHAPTER 209A IS CREATED TO READ AS FOLLOWS:

- (1) *A professional shall report to a law enforcement officer his or her belief that the death of a victim with whom he or she has had a professional interaction is related to domestic violence and abuse or dating violence and abuse.*
- (2) *Nothing in this chapter shall relieve a professional of the duty pursuant to KRS 620.030 to report any known or suspected abuse, neglect, or dependency of a child.*
- (3) *Nothing in this chapter shall relieve a professional of the duty pursuant to KRS 209.030 to report to the cabinet any known or suspected abuse, neglect, or exploitation of a person eighteen (18) years of age or older 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.*

➔SECTION 7. A NEW SECTION OF KRS CHAPTER 209A IS CREATED TO READ AS FOLLOWS:

- (1) *If a law enforcement officer receives a report of domestic violence and abuse or dating violence and abuse, the officer shall use all reasonable means to provide assistance as required under KRS 403.785 and 456.090.*
- (2) *A law enforcement officer who responds to a report of domestic violence and abuse or dating violence and abuse shall use the JC-3 form, or its equivalent replacement, as provided by the Justice and Public Safety Cabinet to document any information or injuries related to the domestic violence and abuse or dating violence and abuse.*
- (3) *A completed JC-3 form, or its equivalent replacement, shall be kept in the records of the law enforcement officer's agency of employment.*
- (4) *If the JC-3 form, or its equivalent replacement, includes information that only relates to a victim as defined in Section 4 of this Act, the form shall not be forwarded to the cabinet.*
- (5) *If the JC-3 form, or its equivalent replacement, includes information on known or suspected child abuse or neglect or the abuse or neglect of an elderly or disabled adult, the form shall be forwarded to the cabinet.*

➔SECTION 8. A NEW SECTION OF KRS CHAPTER 209A IS CREATED TO READ AS FOLLOWS:

- (1) *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*

*under KRS 209.160 or rape crisis centers under KRS 211.600 and information about how to access protective orders.*

- (2) *A nonprofit corporation designated by the cabinet pursuant to Section 13 of this Act as a primary service provider for domestic violence shelter, crisis, and advocacy services in the district in which the provider is located shall make the educational materials required under this section available on its Web site or in print form for professionals to provide to possible victims of domestic violence and abuse or dating violence and abuse.*

➔Section 9. KRS 209A.030 is repealed, reenacted, and amended to read as follows:

- ~~(1) The secretary may promulgate administrative regulations in accordance with KRS Chapter 13A to effect the purposes of this chapter. The secretary may offer or cause to be offered protective services for safeguarding the welfare of an adult who has experienced abuse or neglect inflicted or caused by a spouse. While the cabinet shall continue to have primary responsibility for investigation and the provision of protective services under this chapter, nothing in this chapter shall restrict the powers of another authorized agency to act under its statutory authority.~~
- ~~(2) Any person, including but not limited to physician, law enforcement officer, nurse, social worker, cabinet personnel, coroner, medical examiner, mental health professional, alternate care facility employee, or caretaker, having reasonable cause to suspect that an adult has suffered abuse or neglect, shall report or cause reports to be made in accordance with the provisions of this chapter. Death of the adult does not relieve one of the responsibility for reporting the circumstances surrounding the death.~~
- ~~(3) An oral or written report shall be made immediately to the cabinet upon knowledge of suspected abuse or neglect of an adult.~~
- ~~(4) Any person making such a report shall provide the following information, if known:~~
- ~~(a) The name and address of the adult;~~
  - ~~(b) The age of the adult;~~
  - ~~(c) The nature and extent of the abuse or neglect, including any evidence of previous abuse or neglect;~~
  - ~~(d) The identity of the perpetrator, if known;~~
  - ~~(e) The identity of the complainant, if possible; and~~
  - ~~(f) Any other information that the person believes might be helpful in establishing the cause of abuse or neglect.~~
- ~~(5) Upon receipt of the report, the cabinet shall take the following action:~~
- ~~(a) Notify the appropriate law enforcement agency, if indicated;~~
  - ~~(b) Initiate an investigation of the complaint; and~~
  - ~~(c) Make a written report of the initial findings together with a recommendation for further action, if indicated.~~
- ~~(6) Any representative of the cabinet may enter any health facility or health service licensed by the cabinet at any reasonable time to carry out the cabinet's responsibilities under this chapter.~~
- ~~(7) Any representative of the cabinet actively involved in the conduct of an abuse or neglect investigation under subsection (5) of this section shall also be allowed access to the mental and physical health records of the adult which are in the possession of any individual, hospital, or other facility if necessary to complete the investigation mandated by this section.~~
- ~~(8) Any representative of the cabinet may with consent of the adult enter any private premises where any adult alleged to be abused or neglected is found in order to investigate the need for protective services for the purpose of carrying out the provisions of this chapter.~~
- ~~(9) If a determination has been made that protective services are necessary when indicated by the investigation, the cabinet shall provide such services within budgetary limitations, except in such cases where an adult chooses to refuse such services.~~
- ~~(10) In the event the adult elects to accept the protective services to be provided by the cabinet, no other person shall interfere with the cabinet when rendering such services.~~

(11) ~~Anyone~~ A **professional** knowingly or wantonly violating the provisions of **this chapter** ~~[subsection (2) of this section]~~ shall be guilty of a Class B misdemeanor and penalized in accordance with KRS 532.090. Each violation shall constitute a separate offense.

➔ Section 10. KRS 209A.050 is repealed, reenacted, and amended to read as follows:

Anyone acting upon reasonable cause in **complying with the provisions of** ~~the making of any report or investigation pursuant to~~ this chapter ~~[, including representatives of the cabinet in the reasonable performance of their duties in good faith, and within the scope of their authority,]~~ shall have immunity from any civil or criminal liability that might otherwise be incurred or imposed. Any such participant shall have the same immunity with respect to participation in any judicial proceeding resulting from such **compliance** ~~[report or investigation and such immunity shall apply to those who render protective services in good faith pursuant to the consent of the adult].~~

➔ Section 11. KRS 209A.060 is repealed, reenacted and amended to read as follows:

Neither the **psychotherapist** ~~[psychiatrist]~~-patient privilege nor the husband-wife privilege shall be a ground for excluding evidence regarding the **domestic violence and abuse or dating violence and abuse** ~~[abuse, neglect, or exploitation of an adult]~~ or the cause thereof in any judicial proceeding resulting from a report pursuant to this chapter.

➔ Section 12. KRS 209A.070 is repealed, reenacted, and amended to read as follows:

All ~~[records, requests for services, and reports that contain]~~ information that identifies a current or former client of a domestic violence program ~~is [are]~~ confidential and shall not be disclosed by any person except as provided by law. The cabinet shall have access to client **information** ~~[records, requests for services, and reports]~~ relating to any domestic violence program for the limited purpose of monitoring the program.

➔ Section 13. KRS 209.160 is repealed and reenacted as a new section of KRS Chapter 209A to read as follows:

- (1) There is hereby created a trust and agency account in the State Treasury to be known as the domestic violence shelter fund. Each county clerk shall remit to the fund, by the tenth of the month, ten dollars (\$10) from each twenty-four dollars (\$24) collected during the previous month from the issuance of marriage licenses. The fund shall be administered by the Department of Revenue. The Cabinet for Health and Family Services shall use the funds for the purpose of providing protective shelter services for domestic violence victims.
- (2) The Cabinet for Health and Family Services shall designate one (1) nonprofit corporation in each area development district to serve as the primary service provider and regional planning authority for domestic violence shelter, crisis, and advocacy services in the district in which the designated provider is located.

➔ Section 14. KRS 216B.400 is amended to read as follows:

- (1) Where a person has been determined to be in need of emergency care by any person with admitting authority, no such person shall be denied admission by reason only of his or her inability to pay for services to be rendered by the hospital.
- (2) Every hospital of this state which offers emergency services shall provide that a physician, a sexual assault nurse examiner, who shall be a registered nurse licensed in the Commonwealth and credentialed by the Kentucky Board of Nursing as provided under KRS 314.142, or another qualified medical professional, as defined by administrative regulation promulgated by the Justice and Public Safety Cabinet in consultation with the Sexual Assault Response Team Advisory Committee as defined in KRS 403.707, is available on call twenty-four (24) hours each day for the examinations of persons seeking treatment as victims of sexual offenses as defined by KRS 510.040, 510.050, 510.060, 510.070, 510.080, 510.090, 510.110, 510.120, 510.130, 510.140, 530.020, 530.064(1)(a), and 531.310.
- (3) An examination provided in accordance with this section of a victim of a sexual offense may be performed in a sexual assault examination facility as defined in KRS 216B.015. An examination under this section shall apply only to an examination of a victim.
- (4) The physician, sexual assault nurse examiner, or other qualified medical professional, acting under a statewide medical forensic protocol which shall be developed by the Justice and Public Safety Cabinet in consultation with the Sexual Assault Response Team Advisory Committee as defined in KRS 403.707, and promulgated by the secretary of justice and public safety pursuant to KRS Chapter 13A shall, upon the request of any peace officer or prosecuting attorney, and with the consent of the victim, or upon the request of the victim, examine such person for the purposes of providing basic medical care relating to the incident and gathering samples that may be used as physical evidence. This examination shall include but not be limited to:

- (a) Basic treatment and sample gathering services; and
  - (b) Laboratory tests, as appropriate.
- (5) Each victim shall be informed of available services for treatment of sexually transmitted infections, pregnancy, and other medical and psychiatric problems. Pregnancy counseling shall not include abortion counseling or referral information.
- (6) Each victim shall be informed of available crisis intervention or other mental health services provided by regional rape crisis centers providing services to victims of sexual assault.
- (7) Notwithstanding any other provision of law, a minor may consent to examination under this section. This consent is not subject to disaffirmance because of minority, and consent of the parents or guardians of the minor is not required for the examination.
- (8) (a) The examinations provided in accordance with this section shall be paid for by the Crime Victims' Compensation Board at a rate to be determined by the administrative regulation promulgated by the board after consultation with the Sexual Assault Response Team Advisory Committee as defined in KRS 403.707.
- (b) Upon receipt of a completed claim form supplied by the board and an itemized billing for a forensic sexual assault examination or related services that are within the scope of practice of the respective provider and were performed no more than twelve (12) months prior to submission of the form, the board shall reimburse the hospital or sexual assault examination facility, pharmacist, health department, physician, sexual assault nurse examiner, or other qualified medical professional as provided in administrative regulations promulgated by the board pursuant to KRS Chapter 13A. Reimbursement shall be made to an out-of-state nurse who is credentialed in the other state to provide sexual assault examinations, an out-of-state hospital, or an out-of-state physician if the sexual assault occurred in Kentucky.
- (c) Independent investigation by the Crime Victims' Compensation Board shall not be required for payment of claims under this section; however, the board may require additional documentation or proof that the forensic medical examination was performed.
- (9) No charge shall be made to the victim for sexual assault examinations by the hospital, the sexual assault examination facility, the physician, the pharmacist, the health department, the sexual assault nurse examiner, other qualified medical professional, the victim's insurance carrier, or the Commonwealth.
- (10) (a) Each victim shall have the right to determine whether a report or other notification shall be made to law enforcement, except where reporting of abuse and neglect of a child *or a* ~~spouse, and other~~ vulnerable adult is required, as set forth in KRS 209.030~~, 209A.030,~~ and 620.030. No victim shall be denied an examination because the victim chooses not to file a police report, cooperate with law enforcement, or otherwise participate in the criminal justice system.
- (b) If the victim chooses to report to law enforcement, the hospital shall notify law enforcement within twenty-four (24) hours.
- (c) 1. All samples collected during an exam where the victim has chosen not to immediately report to law enforcement shall be stored, released, and destroyed, if appropriate, in accordance with an administrative regulation promulgated by the Justice and Public Safety Cabinet in consultation with the Sexual Assault Response Team Advisory Committee as defined in KRS 403.707.
2. Facilities collecting samples pursuant to this section may provide the required secure storage, sample destruction, and related activities, or may enter into agreements with other agencies qualified to do so, pursuant to administrative regulation.
3. All samples collected pursuant to this section shall be stored for at least one (1) year from the date of collection in accordance with the administrative regulation promulgated pursuant to this subsection.
4. Notwithstanding KRS 524.140, samples collected during exams where the victim chose not to report immediately or file a report within one (1) year after collection may be destroyed as set forth in accordance with the administrative regulation promulgated pursuant to this subsection. The victim shall be informed of this process at the time of the examination. No hospital, sexual

assault examination facility, or designated storage facility shall be liable for destruction of samples after the required storage period has expired.

➔Section 15. KRS 403.785 is amended to read as follows:

- (1) A court issuing an order of protection shall direct the appropriate law enforcement agency to assist the petitioner in having the provisions of the order complied with.
- (2) When a law enforcement officer has reason to suspect that a person has been the victim of domestic violence and abuse, the officer shall use all reasonable means to provide assistance to the victim, including but not limited to:
  - (a) Remaining at the location of the call for assistance so long as the officer reasonably suspects there is danger to the physical safety of individuals there without the presence of a law enforcement officer;
  - (b) Assisting the victim in obtaining medical treatment, including transporting the victim to the nearest medical facility capable of providing the necessary treatment; and
  - (c) Advising the victim immediately of the rights available to them *as provided in KRS 421.500*, including the provisions of this chapter.
- (3) Orders of protection shall be enforced in any county of the Commonwealth.
- (4) Officers acting in good faith under this section shall be immune from criminal and civil liability.
- ~~{(5) Each law enforcement agency shall report all incidents of actual or suspected domestic violence and abuse within their knowledge to the Cabinet for Health and Family Services, Department for Community Based Services, within forty eight (48) hours of learning of the incident or of the suspected incident.}~~

➔Section 16. The following KRS sections are repealed:

- 209A.040 Cabinet's authority to promulgate administrative regulations on general adult services.
- 209A.080 Confidentiality of spousal abuse or neglect investigation information -- Exceptions.

**Signed by Governor April 11, 2017.**