

Chapter 6: Child Abuse and Neglect

Section 6A: What is Child Abuse and Neglect

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KRS 600.020(5) defines a “**child**” as any person who has not reached his eighteenth birthday.

KRS 600.020(1) defines an **abused or neglected child** as a child whose health or welfare is harmed or threatened with harm when his parent, guardian, or other person exercising custodial control or supervision of the child:

- 1) inflicts or allows to be inflicted upon the child physical or emotional injury by other than accidental means; or
- 2) creates or allows to be created a risk of physical or emotional injury to the child by other than accidental means; or
- 3) commits or allows to be committed an act of sexual abuse, sexual exploitation or prostitution upon the child; or
- 4) willfully abandons or exploits such child; or
- 5) 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 his religious beliefs shall not be considered a negligent parent solely because he fails 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.

Physical Abuse

Physical abuse of children may include pushing, hitting, beating, burning, choking, biting, pulling hair, or immersing in scalding water. By definition, the injury is not an accident. However, the act may be abuse even though the child’s parent/caretaker does not intend to injure the child. Physical abuse may result from over-discipline or from punishment which is inappropriate to the child’s age or condition.

Neglect

Neglect involves inattention to the basic needs of a child, such as food, clothing, shelter, medical care, education, and supervision. While physical abuse tends to be episodic, neglect tends to be chronic. It may also involve a parent’s failure to protect a child from abuse by a sibling.

When considering the possibility of neglect, it is important to note the occurrence of indicators such as abandonment, lack of adequate supervision, lack of good hygiene, lack of necessary medical or dental care, lack of adequate nutrition, and lack of safe, warm, sanitary shelter

Do they occur rarely or frequently? Are chronic, periodic or episodic? In a given community or area, do all the children display these indicators or only a few? Is this culturally acceptable

child-rearing, a different life style, or true neglect? Answers to questions like these may be helpful in differentiating between neglect and alternate life-styles.

Sexual Abuse

KRS 600.020(4a) defines sexual abuse as including but not necessarily limited to any contacts or interactions between a child and an adult in which the parent, guardian or other person having custodial control or supervision of the child or responsibility for his welfare, allows, permits or encourages the use of the child for purposes of the sexual stimulation of the perpetrator or another person. There are many forms of sexual abuse. Non-touching sexual offenses include inappropriate sexual comments directed at the child, exhibitionism, voyeurism, and pornography. Physical contact sexual offenses include incest, rape, molestation (oral or anal), sodomy, sexual abuse, prostitution, and some acts portrayed in pornography. The actions involved in each type of sexual abuse may vary widely from mildly intrusive sexual teasing or play to a much more provocative sexual contact or assault.

Manipulation, threats or force may be involved. One child may describe a family member who keeps "rubbing and patting her bottom" while another child may reveal that he had been forced into an act of anal intercourse. The majority of sexual abuse offenses appear to involve at least subtle coercion and intimidation. However, the law does not necessarily require a showing that the sexual contact was forced on the child.

Emotional Injury

KRS 600.020-21 defines emotional injury as an injury to the mental or psychological capacity or emotional stability of a child as evidenced by a substantial and observable impairment in his ability to function within a normal range of performance and behavior with due regard to his age, development, culture and environment. Emotional injury or maltreatment is excessive, aggressive, or unreasonable behavior that belittles the child or places demands on the child to perform far above his or her capabilities. It may include blaming, belittling, or rejecting a child, constantly treating siblings unequally, and a persistent lack of concern for the child's welfare. While emotional injury does occur alone, it often accompanies physical and sexual abuse. Emotionally maltreated children are not always physically abused but physically abused children are almost always emotionally maltreated.

Definition of "Dependent Child"

KRS 600.020(16) defines "dependent child" as "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."

Where to Report

A report may be made directly to the county office of the Department for Social Services, Cabinet for Families and Children. The Cabinet also has a twenty-four (24) hour hotline to receive reports of suspected abuse of a child or an adult. That number is **1-800-752-6200**. A report may also be made to local police, Kentucky State Police, the Commonwealth's Attorney or the county attorney.

Who Must Report

The individual who knows or suspects the abuse or neglect has the personal responsibility to report. "Passing the buck" or any attempt to prevent or dissuade the reporting of known or suspected child abuse or neglect is illegal. This obligation is referred to as "mandatory reporting." Further, failure to do so is a class B misdemeanor under KRS 620.990 and provides for imprisonment not to exceed 90 days, a fine not to exceed \$250, or both.

KRS 620.030(1) states: Any person (emphasis added) who knows or has reasonable cause to believe that a child is dependent, neglected or abused shall immediately cause an oral or written report to be made to a local law enforcement agency, or the Kentucky state police, the cabinet or its designated representative, the Commonwealth's attorney or the county attorney, by telephone or otherwise. Any supervisor who receives from an employee a report of suspected dependency, neglect or abuse shall promptly make a report to the proper authorities for investigation.

KRS 620.030(2) may require professionals to follow their oral report with a written report: Any person, including teachers, school personnel or a person who...has attended such child as part of his professional duties, shall, if requested, in addition to the report required...file with the local law enforcement agency or the Kentucky State Police or the Commonwealth's or county attorney, the cabinet or its designated representative within forty-eight (48) hours of the original report a written report containing:

- the names and addresses of the child and his parents or other persons exercising custodial control or supervision;
- the child's age;
- the nature and extent of child's neglect or abuse to this child or his siblings;
- any other information that may be helpful.

The law does not require the reporter to have proof that abuse or neglect has occurred before reporting. It specifies "suspected" and includes "reasonable cause to believe." The laws assign responsibility for investigating, "proving", and providing treatment to specific professionals.

What Information Should You Give?

As prescribed by KRS 620.040, the Cabinet for Families and Children must investigate every report of known or suspected abuse or neglect brought to its attention where the alleged perpetrator is a parent, guardian or other person exercising custodial care or supervision of the child.

Each referral received must be investigated to determine if the information reported is valid and if the child is in need of protection or related services. The Cabinet's policy for responding to reports of abuse or neglect is as follows. If the report indicates the child is in imminent danger, a social worker will begin the investigation within the hour. If physical or sexual abuse is reported but the child is not in imminent danger, then if possible, and investigation will begin within twenty-four (24) hours from the time it was reported but no later than forty-eight (48) hours. A report of child neglect causes an investigation to begin within forty-eight (48) hours. If it is

determined that the family requires protective services, the social worker will assess the needs of the family and begin to provide appropriated services. When the referral cannot be substantiated, involvement by the Cabinet, as the investigating agency, ceases. Another investigation in a case would be initiated if new information were reported to the Department for Social Services.

To determine the validity of a referral, the social worker will talk with the child, the parents, and other persons such as school personnel, so that the most accurate information and understanding of the family's functioning is obtained. Even when it is determined that a family is in need of protective services, it is the goal of the Cabinet to keep the family unit together if at all possible. Experience has taught that the best way for a family to learn to solve problems and begin to meet the needs of each member is for that family to remain together. However, if the family situation is volatile or the child is in imminent danger, the social worker may petition the court for a protective order pursuant to KRS Chapter 403, petition the juvenile court for immediate temporary custody of the child or request that the police place the child in protective custody.

KRS 620.040 permits a law enforcement officer to take a child into protective custody without parental consent if there exist reasonable grounds to believe the child is in imminent danger of serious physical injury or is being sexually abused and the parent/custodian is unable or unwilling to protect the child. In other instances an abused spouse or partner and the children may be housed temporarily in a safe shelter at regional spouse abuse center. In any of the cases mentioned, an adult or an adult on behalf of minor children may petition the district court for special protection orders which may direct the perpetrator to stop the abuse, vacate the premises, and seek counseling. It may also address custody, support and other issues.

Confidentiality

Information obtained during the course of an investigation is confidential with a few exceptions. These are specified in KRS 620.050(4). Medical, psychological, educational, or social service agencies, corrections personnel, or law enforcement agencies, including the county attorney's office, the coroner, and the local child fatality response team who have a "legitimate interest in the case" may be considered one exception.

Immunity from Liability

Any person who has reasonable cause to believe a child has been abused or neglected and who reports, in good faith, to the authorities is provided protection from civil or criminal liability. This protection or immunity is extended to participation in any judicial proceeding resulting from a report of abuse or neglect. KRS 620.050 (1)

Chapter 6: Child Abuse and Neglect

Section 6B: Child Abuse and Adult Victims of Domestic Violence:

Possible Impact of LANE V. COMMONWEALTH

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Attorneys representing battered women who have children need to be aware of the child abuse provisions in the Kentucky penal code and their possible impact, if any, upon their client. Clearly, the client is a victim here and should be treated and recognized as such in the legal system, and entitled to appropriate psychological and social support services. However, the Kentucky Penal Code criminalizes child abuse not only when it is directly caused by the perpetrator, but also when the parent allows such abuse to be inflicted upon the child. An awareness and understanding of the problem of domestic violence would dictate that adult victims of domestic violence not face prosecution for the abuse that their perpetrator also inflicted upon the children. Attorneys and victims, nonetheless, should be aware of the criminal provisions which permit prosecution for child abuse when the parent fails to act to protect the child.

Until recently, the sole criminal liability an individual faced for failing to protect a child from abuse arose under the abuse statutes. Pursuant to KRS Chapter 508, an individual is guilty of criminal abuse if he “permits another person of whom he has actual custody to be abused” and the individual sustains serious physical injury, is placed in a situation that may cause him serious physical injury, or is tortured or receives cruel punishment. KRS 508.100-508.120. Criminal abuse ranges from a Class C felony (prison sentence of five to ten years) to a Class A misdemeanor (up to twelve months), depending upon the mental state with which the defendant committed the abuse.

However, in the recent opinion of *Lane v. Commonwealth, Ky.*, 956 S.W.2d 874 (1997), the Supreme Court has expanded criminal liability for those who fail to protect their children to include complicity to commit assault. An individual is guilty of complicity to commit an offense when he “having a legal duty to prevent the commission of the offense, fails to make a proper effort to do so.” KRS 502.020(1)(c). Previous case law, decided before the current child abuse and neglect statutes of KRS Chapter 620, had held that a parent had no duty to prevent the assault of his or her child. See *Knox v. Commonwealth, Ky.*, 735 S.W.2d 711 (1987).. In *Lane*, the Supreme Court reversed that ruling, holding that parents do have a duty to protect their children from assaults committed by others. The defendant in *Lane* was a woman whose boyfriend physically assaulted her two year old child. The boyfriend was indicted on charges of first degree assault, and Ms. Lane faced charges for complicity to commit assault, a charge which the Supreme Court found proper. While there was no suggestion in *Lane* that the defendant was abused by her boyfriend, the scope of this opinion is not yet clear. According to J. Cooper’s

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portion of the opinion, however, Lane should not be interpreted so broadly as to include mothers who are abused by spouses or boyfriends and cannot act in those circumstances to protect their children: finding such duty to protect “is not to say that parents have the legal duty to place themselves in danger of death or great bodily harm in coming to the aid of their children.” Attorneys who represent domestic violence victims need to be aware of the possibly wide reach of Lane, as well as its potentially more narrow focus, as recognized in J. Cooper’s analysis.