

THE USE OF NEW INTERPERSONAL PROTECTIVE ORDERS IN CASES OF DATING VIOLENCE, SEXUAL ASSAULT, & STALKING

Resource Document for Kentucky Colleges and Universities



This document is intended to provide general information only and should not be construed as legal advice or a legal opinion. Specific questions about the potential legal ramifications of school management of Interpersonal Protective Orders obtained by and/or against students should be directed to an attorney.

The 2015 General Assembly created a new chapter of Kentucky law (KRS Chapter 456) to establish civil orders of protection for victims of dating violence, sexual assault, and stalking (protective orders for victims of domestic violence are still found in KRS 403.715 -403.785). This document will provide Kentucky universities and community and technical colleges (KCTCS) with facts to help understand how the new law works for students in need of protection.

The new law went into effect January 1, 2016

KEY DEFINITIONS RELATED TO INTERPERSONAL PROTECTIVE ORDERS

Dating violence and abuse means physical injury, serious physical injury, stalking, sexual assault, or the infliction of fear of imminent physical injury, serious physical injury, sexual abuse or assault occurring between persons who are or have been in a dating relationship (KRS 456.010(2)).

Dating relationship means a relationship between individuals who have or have had a relationship of a romantic or intimate nature. It does not include casual acquaintanceships or ordinary fraternization in business or social contexts (KRS 456.010(1)).

To assist judges in determining whether the relationship between a petitioner and respondent is a dating relationship, the statute lists six factors the court may consider (KRS 456.010):

1. Declarations of romantic interest;
2. The relationship was characterized by the expectation of affection;
3. Attendance at social outings together as a couple;
4. The frequency and type of interaction between the persons, including whether the persons have been involved together over time and on a continuous basis during the course of the relationship;
5. The length and recency of the relationship; and
6. Other indications of a substantial connection that would lead a reasonable person to understand that a dating relationship existed.

Interpersonal Protective Order (IPO) means a civil order of protection (KRS 456.010(5)) issued by a court of jurisdiction (typically family court or district court) after a hearing where both the petitioner and respondent have the opportunity to present evidence. Through an IPO, a judge sets conditions upon the respondent which are intended to reduce future abuse. IPOs can last

for up to three years and are renewable at the discretion of the court.

Temporary Interpersonal Protective Order (TIPO) means a temporary civil order of protection (KRS 456.010(5)) issued by a court of jurisdiction (typically family court or district court) following the filing of a petition for a protective order. A TIPO sets conditions upon the respondent intended to reduce the likelihood of future abuse. The conditions of the TIPO are in effect after the document has been served on the respondent and lasts until a hearing is scheduled to occur (generally within 14 days but it may last up to six months if the respondent has not been served).

Law enforcement officer means a police officer who comes under the standards of the Professional Standards Act of 1998. Campus police officers fall into this category.

Campus police officers fall into this category and have full law enforcement authority as described in KRS 456.

KRS 158.441 defines a school resource officer (SRO) as a sworn law enforcement officer who has specialized training to work with youth at a school site. The officer shall be employed through a contract between a local law enforcement agency and a school district. These officers have full law enforcement authority on their designated properties only.

Petitioner means a minor or adult who believes herself or himself to be a victim of dating violence, sexual assault, or stalking as defined below and who seeks an IPO.

Respondent means the individual who the petitioner believes has harmed her/him. A respondent is the person who the judge restrains through conditions in an IPO.

Sexual assault means conduct prohibited as any degree of rape, sodomy, or sexual abuse pursuant to KRS Chapter 510 or incest under KRS 530.020.

Stalking means conduct prohibited as stalking under KRS 508.140 (misdemeanor stalking) or 508.150 (felony stalking).

PROCESS FOR OBTAINING AN IPO

Step 1: The petitioner fills out a petition for an IPO on a form provided by the local court system (generally meaning the Circuit Clerk's Office). Petitions may be filed by victims of dating violence and abuse, stalking, or sexual assault (KRS 456.030). There is no fee to file for an IPO. Petitions include questions about the nature of the relationship between the petitioner and respondent (e.g., boyfriend, stranger, etc.); the facts and circumstances that are the basis for the petition; and information on the school or postsecondary institution attended by the petitioner.

If the petitioner is a minor, the statute provides that an adult may file on the minor's behalf. If a minor files a petition with the clerk on his or her own behalf, however, it should be accepted.

The addresses of petitioners are omitted or deleted from any orders or documents that will be made available to the public or to any respondent.

Step 2: A judge reviews the petition. If the judge finds that dating violence and abuse, sexual assault, or stalking has occurred, the judge shall set the matter for a hearing and issue a summons for the respondent to appear in court for the hearing. There is no fee charged to the petitioner for service of an IPO-related summons.

If the judge also finds an immediate and present danger of dating violence, sexual assault, or stalking, the judge will also issue a temporary IPO (called TIPO) that can last for up to 14 days. If the respondent is not present at the hearing for the IPO and has not been served, a previously issued TIPO shall remain in place, and the court shall direct the issuance of a new summons for a hearing set not more than 14 days in the future (KRS 456.040). The statute

allows for the continuation of temporary IPOs under the above circumstances for up to 6 months (KRS 456.050(2)(b)).

Protective order hearings are typically not confidential. If one or both of the parties is a juvenile, however, judges may choose to hold the hearing in a closed environment or as a separate docket.

The statute (KRS 456.050) requires the court, when either party is a minor, to inquire whether the parties attend the same college or university. Additionally, the judge is required to ensure that the conditions included in the IPO have the "least disruption in the administration of education to the parties while providing appropriate protection to the petitioner."

Step 3: A law enforcement officer shall serve the summons and TIPO on the respondent. A summons must be served personally on the respondent. If the respondent is a minor, an effort may also be made to serve his or her parent or guardian in addition to the minor.

Police officers who are employed by or work at a college, or university and who have arrest powers as provided in KRS Chapter 15 shall assume the duties as spelled out in KRS 456. That includes arresting respondents who violate an IPO and assisting the petitioner with having the provisions of the order complied with.

Step 4: A hearing is held and the judge will consider evidence presented by the petitioner and respondent. Attorneys are not required for the hearing but may be present to represent either party. If the judge finds by a preponderance of the evidence that dating violence, sexual assault, or stalking has occurred and may occur again, the judge shall issue an IPO which can last for up to 3 years.

WHAT A JUDGE CAN ORDER THE RESPONDENT TO DO OR NOT TO DO THROUGH AN IPO

The options below represent the statutory list from which a judge can select conditions that are most appropriate to the case. Item #6 provides the court with leeway to identify other options unique to the case that will reduce the likelihood of future violence.

1. Do not commit further acts of dating violence, sexual assault, or stalking;
2. Do not have any unauthorized contact or communication with the petitioner or other person specified by the court;
3. Do not approach the petitioner or other person specified by the court within a distance specified in the order, not to exceed 500 feet;
4. Do not go to or within a specified distance of a specifically described residence, school, or place of employment or area where such a place is located; and
5. Do not dispose of or damage any of the property of the parties;
6. A judge may also direct or prohibit any other actions by the respondent that the court believes will be of assistance in eliminating future acts of dating violence and abuse, stalking, or sexual assault.
7. A judge shall not order the petitioner to take any affirmative action except that a judge may direct either or both parties to receive counseling services available in the community that are appropriate in cases of dating violence, sexual assault, or stalking.

WHAT HAPPENS IF THE RESPONDENT VIOLATES THE CONDITIONS OF A TIPO/IPO?

1. Violation of the terms or conditions of a TIPO/IPO after a respondent has been served or given notice of the order may be treated as contempt of court or as a Class A Misdemeanor.

2. Once a criminal or contempt proceeding has been initiated, the other shall not be undertaken regardless of the outcome of the original proceeding.
3. If the criminal route is selected, a Class A Misdemeanor is punishable by up to 12 months in the county or regional jail.
4. A law enforcement officer (including school resource officers, college and university police) shall, upon probable cause, make an arrest for violations of a valid TIPO/IPO.

ADDITIONAL LEGAL RESPONSIBILITIES FOR COLLEGES AND UNIVERSITIES

1. Title IX of the Education Amendments of 1972 prohibits discrimination on the basis of sex in any education program or activity that receives federal funding. Under Title IX, discrimination on the basis of sex can include sexual harassment, rape and sexual assault, intimate partner violence, and stalking. Title IX requires that assault victims receive appropriate accommodations in relation to their classes and schoolwork assignments.
2. When both the petitioner and respondent to an IPO are students of the college or university, accommodations should be available that allow both to access education without endangering the petitioner (KRS Chapter 456) or violating the IPO.
3. To achieve item #2 above, the university should determine if both the petitioner and respondent attend the university, and should determine what, if any, classes they have in common, and where on campus they are likely to encounter one another. That may include residence halls, school hallways, lockers, restrooms, athletic fields, gymnasiums or athletic facilities, campus lunchrooms or restaurants, parking lots, and school buses or other transportation.
4. As provided in the Clery Act (20 U.S.C.

- § 1092(f) and Title IX regulations, any student who becomes a victim of dating violence, sexual assault, or stalking (whether on or off campus) has the right to receive a written explanation of their rights and options. (Note: the notice of rights must be provided to both parties involved in University disciplinary processes).
5. To assist faculty with managing student disclosures in a manner consistent with the federal law and in the best interest of a student, universities should consider drafting model language that faculty can use on course syllabi (see Appendix A).
 6. Resource lists shared with students should include the opportunity to access TIPOs/IPOs as appropriate.
 7. The college or university should ensure the confidentiality of student information as provided in the Family Educational Rights and Privacy Act (FERPA) (20 U.S.C. § 1232g; 34 CFR Part 99) and applicable state law. This is particularly important in cases of sexual assault, dating violence, and stalking as confidentiality can relate directly to the physical and psychological safety of the student.
 8. Similarly, colleges and universities should provide victims/petitioners notice of their “opt out” procedures for disclosure of “directory information,” pursuant to FERPA.
 9. The college or university should create policies and procedures for handling cases in which students are petitioners or respondents to an IPO. This should include how university officials will become aware of IPOs, how this knowledge will trigger investigations pursuant to Title IX, and the roles administrators and university law enforcement will play.
 10. Colleges and universities are encouraged to operate women’s or victim’s centers, advocacy programs, or counseling centers so that victims have access to staff with specific training on sexual assault, dating violence, and stalking.
 11. Colleges and universities are encouraged to provide training related to TIPOs/IPOs to key administrators and staff who are involved in disciplinary actions related to students.
 12. Relatedly, training should be provided to campus law enforcement on the use of IPOs, their entry into the Law Information Network of Kentucky (LINK) System, and the enforcement of IPOs issued by a court.
 13. Colleges and universities should train appropriate personnel to assist the petitioner (and parents as appropriate) in developing a safety plan. If university personnel do not have experience in creating safety plans, with the permission of the student, they should consider contacting the regional domestic violence program or rape crisis center for consultation.
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- ### HOW CAN COLLEGES, UNIVERSITIES AND THEIR STUDENTS RECOGNIZE A RISK OF DATING VIOLENCE, SEXUAL ASSAULT, OR STALKING
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1. If a romantic partner, acquaintance, or stranger checks or otherwise accesses a person’s cell phone, email, or social media without the person’s permission.
 2. If a romantic partner excessively checks up on his/her partner, including by phone, email, text, social media, or other means.
 3. If a romantic partner shows extreme jealousy, possessiveness, or insecurity; and/or accuses the partner of infidelity.
 4. If a romantic partner attempts to isolate the partner from family and friends.
 5. If a romantic partner shows certain emotional states or behaviors, including:
 - a. Constant belittling or put-downs of the partner
 - b. Explosive temper
 - c. Erratic mood swings
 - d. Substance abuse

6. If a romantic partner inflicts physical pain or injury or threatens to do so.
 7. If a romantic partner who has engaged in any violent or abusive behavior purchases or possesses a firearm (school personnel should be aware of the resource available through Appriss that allows victims to be notified when the offender attempts to purchase a firearm (www.vinelink.com).
 8. If a romantic partner forces a partner to engage in any form of sexual contact.
 9. If a student is repeatedly contacted, harassed, or threatened by an ex-partner.
 10. If an acquaintance or stranger appears repeatedly at a student's home, classroom building, or workplace.
 11. If an acquaintance or stranger uses social media to harass another victim, particularly with sexual content.
 12. If an acquaintance or stranger has previously committed a sexual offense against the victim, and begins to contact the victim in person or electronically.
3. College and university personnel should be aware of the resource available through Appriss that allows victims to be notified when the offender attempts to purchase a firearm (www.vinelink.com).
 4. For assistance in assessing the risk of homicide by a dating partner, suggest that students complete the Danger Assessment created by Dr. Jacquelyn Campbell at Johns Hopkins University. <https://www.dangerassessment.org/>. After completing the assessment, students should discuss it with a school counselor or victim advocate in the community.
 5. For assistance in determining risk associated with stalking, suggest that students complete the Stalking and Harassment Assessment and Risk Profile (SHARP) created by Dr. TK Logan at the University of Kentucky. <https://ukcdar.uky.edu/limesurvey/index.php?sid=57925&lang=en&newtest=Y>. SHARP produces two narrative reports based on a student's answers: the first report is a description of the situation with a risk factor profile and the second report provides safety suggestions based on assessment responses. The assessment can be accessed at www.CoerciveControl.org (click on "enter a SHARP"). After completing the assessment, students should discuss it with a school counselor or victim advocate in the community.

WHAT RESOURCES ARE AVAILABLE FOR STUDENTS EXPERIENCING DATING VIOLENCE, SEXUAL ASSAULT, OR STALKING?

1. Outside of their own campus boundaries, colleges and universities should be familiar with local victim advocacy agencies, specifically including local domestic violence programs and rape crisis centers. Information regarding such programs can be accessed at the website of the Kentucky Coalition Against Domestic Violence (www.kcadv.org) or the website of the Kentucky Association of Sexual Assault Programs (www.kasap.org).
2. College and university personnel should be aware of the resource available through Appriss that allows petitioners to access information about their protective order, including the status of the order and reminders about upcoming court hearings <http://www.appriss.com/vine-protective-order.html>.

APPENDIX A: EXEMPLAR LANGUAGE FOR FACULTY TO USE ON COURSE SYLLABI

Guidelines for Faculty and Instructors

When a student discloses that she or he has been a victim of intimate partner violence (defined for this purpose as occurring between parties who are spouses, ex-spouses, live together, or have a child in common), dating violence, sexual assault, or stalking, your primary role is to link that student with the critical resources noted below and report the disclosure to your institution's Title IX Coordinator. Your role is to take the disclosure at face value, not to become an investigator, counselor, or advocate.

You may share another copy of your course syllabus with the student that has the information below included; you may assist the student in calling one of the resources below; or escort the student to one of these services. If what a student discloses poses an immediate threat (e.g., an abusive partner is waiting for her outside the classroom), the first call should be to law enforcement.

Suggested Language for Course Syllabi

By federal law, any student who is a victim of dating violence, domestic/intimate partner violence, sexual assault, or stalking (whether on or off campus) is entitled to appropriate accommodations for her or his coursework.

To get help getting accommodations and other support, students who are assaulted can do any of the following:

1. In the case of an emergency, contact the [insert university police and/or 911].
2. Tell your instructor. He or she can assist you in accessing resources appropriate to your situation;
3. Call the [insert university's advocacy program];
4. Call [insert university counseling center];

5. Call [insert university Title IX officer]
6. Students may also contact community resources 24-hours a day, including:
 - a. [insert regional Rape Crisis Center
 - b. [insert regional Domestic Violence Program].

FOR ADDITIONAL INFORMATION OR CONSULTATION RELATED TO THIS DOCUMENT, CONTACT ITS AUTHORS:

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