

Elder Abuse in Kentucky 2008 Annual Report

Kentucky Cabinet for Health and Family Services



Kentucky
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Kentucky Elder Abuse Committee

Through 05 HB 298, the General Assembly has provided the Cabinet for Health and Family Services, law enforcement, prosecutors, the courts and other community partners with the tools needed to better prevent maltreatment of elders and protect them from repeat abuse, neglect and exploitation. Effective implementation of the provisions of this law requires the oversight, guidance and direction of the statewide Elder Abuse Committee mandated in the statute. In a very real way, this Committee provides the vehicle for accountability by the Cabinet and its partners to the General Assembly, the public at large and the individuals served.

As dependable and comparable data are collected and better information compiled, the Committee, the Cabinet, the professional community, and the legislature will better be able to discern trends and anticipate future needs of an aging population in the Commonwealth. However, some such information can be extracted from the data contained in this report (see Appendix B). Specifically, the trend toward increased self-neglect, caretaker neglect, and financial exploitation, for example, is noteworthy and bears consideration as future public policy regarding elder maltreatment prevention and enforcement is shaped.

It is likely that the growing number of aging citizens and their families that decide to have services provided in private homes, combined with public awareness, increased reporting and a growing elder population are all factors that impact the recent rise in self neglect and exploitation. Certainly, there are fewer protections and supports currently available to those receiving care in their private homes than are provided in long term care settings; but one of the long term goals of the Committee is to enhance in-home services so elders will be able to remain safe in their homes as long as possible.

Simultaneously, maintaining that vital balance between the right to privacy and the responsibility to protect will need to be defined within the context of changing trends. The ultimate purpose of the statewide Elder Abuse Committee is to inform policy-makers of changing trends and future needs with respect to elder maltreatment in the Commonwealth and to provide oversight and recommendations to the Cabinet regarding potential necessary practice changes to better serve the elder population.

Finally, a plan for improving the communication, coordination and cooperation with prosecutors and the court, in order to increase the number of successful prosecutions of perpetrators of maltreatment, is also being undertaken by the statewide Committee. It is only through all of these concerted efforts that we will ensure that the elder citizens of Kentucky are able to live lives free of abuse, neglect and exploitation.

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Current Status of Adult Protection in Kentucky

In the past year Kentucky achieved success on several fronts and continued efforts toward fulfilling a stated objective to strengthen the adult protective service infrastructure throughout the Commonwealth. Working closely with the law enforcement community including the Office of the Attorney General (OAG), the courts, the statewide network of Local Coordinating Councils on Elder Abuse (LCCEA), the National Center on Elder Abuse (NCEA), the Kentucky Association of Gerontology, (KAG), and other key contributors, the Cabinet for Health and Family Services (CHFS) was able to sharpen existing protocols for receiving reports of abuse, neglect and exploitation, establish designated adult protective service teams in 101 of Kentucky's 120 counties, create the first ever public service announcements concerning elder abuse for national distribution, nurture an electronic notification system between the CHFS and law enforcement, and continue a partnership with the University of Kentucky to study the efficacy of the adult protective services system in Kentucky. These important initiatives serve as hallmark signs that Kentucky is prepared to continue to meet the challenges of an increasing aging population well into the future.

Throughout the Commonwealth, the LCCEAs continue to serve as the conduit for community-based efforts aimed at public awareness and prevention of elder abuse. Most notably from a statewide perspective, the LCCEA sponsorship of bank teller training sessions administered by the OAG's Consumer Protection Division was integral to furthering educational opportunities for individuals working on the frontlines of the private sector. Through instruction on recognizing financial exploitation and reporting suspicions, bank tellers across the state are better equipped to assist in the protection of vulnerable adults who may be victimized and at risk of losing their financial assets. It is through this kind of outreach we are reminded that abuse, neglect and exploitation of the elderly and disabled are social problems that must be met with a cooperative effort across agency, community and individual lines if we are to effectively meet the challenge of protecting those who cannot protect themselves. The LCCEAs range of activities and grassroots efforts are many and varied. Continued support of these councils by the Elder Abuse Committee and the CHFS Leadership will be critical in their continued growth and abilities to develop community-specific responses to abuse of vulnerable adults.

The OAG advanced additional efforts at education by producing and widely disseminating a booklet entitled "How to Protect Nursing Home Residents: A Guide for Taking Action Against Abuse and Neglect." This booklet serves as a guide for family members, friends and other concerned persons on how to recognize, document and report suspected abuse and neglect of adults residing in a long-term care setting. They were distributed statewide through the Department for Aging and Independent Living's (DAIL) Long Term Care Ombudsman (LTCO) program and the Senior Citizen Centers. Advocacy informed by knowledge is an effective means of protecting vulnerable adults in a variety of care settings, including institutionalized forms of care. A family member or friend taking an active interest in the well-being of a loved one often can impact quality of life issues in a positive manner.

Working off of a 2006 policy recommendation from the Elder Abuse Committee, the CHFS has been moving toward the development of designated Adult Protective Service teams throughout the state. Each of the nine (9) DCBS Service Regions now have designated APS Teams. One Hundred and Twenty Nine (129) DCBS staff members are presently assigned to these teams and one hundred and one (101) out of one hundred and twenty (120) Kentucky counties are presently served by designated APS Teams. The advent of designated APS Teams coupled with an improved intake mechanism to more effectively screen and assign referrals, marks a progressive step toward improved agency responsiveness and positive client outcomes and provides for consistency in interpretation and application of adult protective services statute and policy. Additionally, by partnering with other authorized agencies such as law enforcement, including the OAG, the Office of the Inspector General (OIG), the Department for Aging and Independent Living (DAIL), the Department for Mental Health, Developmental Disabilities and Addiction Services (DMHDDAS), and the courts, designated APS teams may better adopt a multidisciplinary investigative design that emphasizes victim safety and self determination, perpetrator accountability, and continuous quality improvement. With projected budgetary limitations, the challenge of tomorrow will be the maintenance and support of designated APS Teams by CHFS Leadership and its partnering agencies.

The Electronic 115 (DCBS referral form) was piloted in the fall of 2006 in the DCBS Southern Bluegrass Service Region with law enforcement (KSP Post 7, Berea PD,). This tool allows for multi-agency tracking of the status of an APS case as it progresses thorough the APS and criminal justice system. Training designed to support this initiative was conducted this past year with several law enforcement agencies and DCBS staff participating. In 2008, 96 cases of adult abuse, neglect or exploitation were shared and tracked utilizing this tool. Expansion of the pilot is planned for early 2009 in the DCBS Salt River Trail Service Region. Timely notification of abuse, neglect and exploitation of vulnerable adults across agency lines is a key component in the establishment of a multidisciplinary investigative design that is directed toward improved outcomes for vulnerable adults. Enhanced efforts toward improving the lines of communication across agency lines via the electronic 115 will continue to be a priority of the CHFS and law enforcement this coming year.

In May of this past year, the CHFS partnered with the NCEA to produce the nation's first Elder Abuse Public Service Announcements (PSA). One of Kentucky's own, Mr. William Mapother, an accomplished actor, generously lent his talents to the project and several state and national spots were produced that highlighted the problem of elder abuse and urged people to report it. To date, these PSAs have been distributed to all 50 states; have aired in 15 states and in Canada. It is anticipated that these important PSAs will receive expanded airtime this coming year.

Efforts to further advance the public's awareness of elder maltreatment and to help bring about an end to it occurred in June of this past year when the CHFS partnered with the Kentucky Association of Gerontology and the Kentucky Chapter of AARP to hold the 4th annual Elder Abuse Rally at the Capitol. Notable dignitaries including Lieutenant Governor Daniel Mongiardo, Attorney General Jack Conway, Kentucky State Police Commissioner

Rodney Brewer, CHFS Secretary Janie Miller, CHFS Inspector General Sadiqa Reynolds, and Mr. William Mapother provided their leadership and strong voice to this well attended event. The commitment of these KY leaders to ending elder abuse served to inspire and re-inforce that the dignity, respect, safety, and well being of our elders is paramount.

While the achievements highlighted here are noteworthy, much remains to be accomplished as Kentucky moves forward in meeting the needs and challenges presented by an increasing aging population. The historical foundation for Kentucky's Adult Protective Services system serves to inform our response to these challenges and provides an assurance that such will be met with vigor and an unwavering commitment to preserving the safety and dignity of vulnerable adults throughout this Commonwealth.

Projects and Initiatives Aimed at Reducing Adult Maltreatment

Elder Justice Act

Elder Justice Act of 2008(S.1070) - Amends the Social Security Act (SSA) to add a new title XXII (Elder Justice) to establish:

- within the Department of Health and Human Services (HHS) an Office of Elder Justice (OEJ);
- within the Office of the Secretary the Elder Justice Coordinating Council to make recommendations to the Secretary and the Attorney General for the coordination of activities of HHS, the Department of Justice, and other relevant federal, state, local, and private agencies and entities, relating to elder abuse, neglect, and exploitation and other crimes against elders; and
- the Advisory Board on Elder Abuse, Neglect, and Exploitation.

The Elder Justice Act provides for uniform collection, maintenance, and dissemination of national data relating to elder abuse, neglect, and exploitation, including an Elder Justice Resource Center in the Office of Elder Justice (OEJ).

The Act funds the initiatives by authorizing the HHS Secretary to award grants for the following:

- (1) prevention of elder abuse, neglect, and exploitation;**
- (2) five Centers of Excellence nationwide specializing in research, clinical practice, and training relating to elder abuse, neglect, and exploitation;**
- (3) six diverse communities to examine various types of elder shelters and test various models for establishing safe havens;**
- (4) nonprofit organizations and faith-based organizations to establish or continue volunteer programs focusing on the issues of elder abuse, neglect, and exploitation, or providing related services; and**
- (5) various multidisciplinary elder justice activities.**

The Office of Elder Justice will be established within the Department of Justice. The Act authorizes the Attorney General to award: (1) victim advocacy grants; and (2)

grants for specified support to local and state prosecutors handling elder justice-related cases.

Intended to protect the elderly in long term care and others considered "at risk", the Elder Justice Act provides for:

- (1) reporting to law enforcement of crimes occurring in federally-funded long-term care facilities;
- (2) revising the quality of long-term care; and
- (3) increasing consumer information about long-term care, including an HHS long-term care consumer clearinghouse.

The Act amends: (1) the Older Americans Act of 1965 with respect to the long-term care ombudsman program; (2) part A (General Provisions) of SSA title XI to establish an adult protective services grant program; (3) SSA titles XVIII (Medicare) and XIX (Medicaid) to assure safety of residents when nursing facilities close; and (4) part E (Miscellaneous) to apply skilled nursing facility preventive abuse requirements to long-term care facilities and providers.

The EJA was passed favorably out of the Senate Finance Committee on 9/18/08 and placed on General Orders on the Senate floor. No additional action has occurred on the proposed legislation at this time.

Elder Abuse Public Service Announcements

In an effort to combat elder abuse, the Kentucky Cabinet for Health and Family Services partnered with the National Center on Elder Abuse to produce the first National Public Service Announcements concerning elder abuse. The announcements are designed to promote elder abuse awareness to the public on National, State, and Local levels. William Mapother, actor and Kentucky native, is leading the campaign as the spokesperson. The public service announcements have been distributed to local television and radio stations across Kentucky and are being broadcast nationally by the National Center on Elder Abuse. Currently, there are eight states including Kentucky who are broadcasting the announcements. The announcements are designed to educate the public on how to recognize the growing epidemic of elder abuse and encourage citizens to join efforts in

preventing elder abuse by encouraging the public to speak up because, “Our elders deserve better.” The PSAs may be viewed at the following sites:

http://www.ncea.aoa.gov/ncearoot/Main_Site/Media/psa1.wmv

http://www.ncea.aoa.gov/ncearoot/Main_Site/Media/psa2.wmv

http://www.ncea.aoa.gov/ncearoot/Main_Site/Media/psa3.wmv

http://www.ncea.aoa.gov/ncearoot/Main_Site/Media/psa4.wmv

http://www.ncea.aoa.gov/ncearoot/Main_Site/Media/psa5.wmv

http://www.ncea.aoa.gov/ncearoot/Main_Site/Media/psa6.wmv

These important PSAs would not have been possible if not for the tenacity and enthusiasm of Kim Baker, who currently serves as Kentucky’s Long Term Care Ombudsman.

Nursing Home Diversion Grant

The Nursing Home Diversion grant was designed to accomplish the ideals of dignity, privacy and personal autonomy to clients. This grant places decisions and choices about their lives directly into the hands of each client. **Clients** decide their needs, **clients** dictate a care plan, **clients** manage their own plan of care, and **clients** live within their means utilizing a finite, predetermined budget to obtain and retain the necessary care required to maintain residence in their home environment. The assigned Case Worker acts as counselor and advocate in order to facilitate the requests of the client and adhere to the plan of care as written and approved by the client.

In brief, the Nursing Home Diversion Grant helps divert the aged and disabled from restrictive and costly institutions by:

- 1) Designation of a finite amount of dollars in a monthly budget to each eligible client;
- 2) Counseling and Case Managing clients toward utilization of these funds with common sense and reason so that needs are addressed using the most cost effective means;
- 3) Assisting each client with purchase and management of said services;
- 4) Performance of regular follow up visits to assure satisfaction, appropriate service provision, and safety.

This program encourages autonomy and self reliance. It helps people stay in their homes, their communities, and with their families. Institutionalization is seen as a last, **not** a first, resort. Clients may choose neighbors, friends, and even family to assist them (providing services are not being duplicated). All family support which was previously available to clients prior to this grant will continue to be expected and not recompensed.

The cost of a residential nursing home for the *lightest* (“personal care”) level of care approximates \$125.00 per day in Kentucky, or about \$3,700.00 per month. Not all clients **need**, nor do they **want** extensive residential services. The pilot Nursing Home Diversion grant currently allocates \$400.00 per month to each client. Caregivers are paid between \$7.00 and \$10.00 per hour. This allows approximately 40 hours of service per month or slightly over 8 hrs per week. The client chooses which days, how many hours per day, and which tasks are to be accomplished, mindful that family support is essential and integral to the process.

Kentucky is currently serving 18 clients in Big Sandy and Kentucky River which are of the highest poverty regions of the state. Thus far, approximately 80% of these clients are eligible for Nursing Home residency of Intermediate or Skilled levels, and most all would qualify for Medicaid within 6 months were they institutionalized.

DMHDDAS Training Efforts

The Department for Mental Health, Developmental Disabilities and Addiction Services, Division of Mental Retardation (DMR) has developed and offered multiple educational opportunities for State Law Enforcement, Supports for Community Living (SCL) and State General funds (SGF) providers with a focus on raising awareness of abuse of vulnerable adults. Educational opportunities have included training of both administrative and front line staff on developmental disabilities, co-occurring substance abuse and mental health diagnoses, medical/physical health conditions of the populations, and on the prevention of physical and emotional abuse, medical neglect, and financial exploitation.

Quarterly video conferences are held for SCL providers which include the following topics:

- Windows of Opportunity: Tips for Serving Individuals that are Deaf and Hard of Hearing, presented by Michelle Niehaus, KDMHDDAS
- Risk Management: Issues around Power Struggles, presented by DMR Staff
- Michelle P Waiver Updates, presented by Department for Medicaid Services
- DMR Updates, presented by DMR Staff Fetal Alcohol Spectrum Disorder, presented by Dr. Yasmin Senturias, University of Louisville
- Special Needs Trusts, presented by Bill Dolan, Protection and Advocacy
- “My Life, My Way”, presented by Barry Gilbert
- Risk Management: MRSA Infection, presented by DMR Nurse Consultant
- Cardiovascular Emergencies, presented by DMR Nurse Consultants
- Advocating during both routine and emergency medical treatment
- Pharmacological implications for persons with Developmental Disabilities presented by Dr. Maxwell
- Presentation on diabetes presented by DMR

Trainings provided for SCL and SGF providers include:

- Rights and Advocacy
- Core Training TOT
- DMR Case Management Training
- Crisis Prevention and Intervention TOT
- Coping with Grief & Loss
- Rights and Advocacy
- Person Centered Planning
- Crisis Prevention and Intervention TOT

In addition, agency specific training and technical assistance is provided to SCL providers as needed on such topics as: menopause; good touch versus bad touch; and rights restrictions. In an effort to prevent abuse, neglect and exploitation in the waiver program, SCL recipients are also provided educational training to learn to recognize and report abuse.

Office of the Attorney General Elder Abuse Initiatives

The Attorney General's Consumer Protection Division conducted bank teller training sessions sponsored by the Local Coordinating Councils on Elder Abuse to educate front line bank employees on how to recognize financial exploitation, and to whom they should report suspicions.

Additionally, the Office of the Attorney General published a guide for family members entitled "How to Protect Nursing Home Residents: A Guide for Taking Action Against Abuse and Neglect." This booklet guides family members on how to recognize, document and report suspected elder abuse and exploitation. These booklets have been distributed statewide through the Division of Aging, Office of the Ombudsman, and to senior citizen centers during the Attorney General's Senior Crime College crime prevention program.

Consumer Directed Option (CDO)

In FY 2008 1,647 individuals choose to consumer direct their services through CDO. Of this number self direction was chosen by 1,569 for Home Community Based Waiver, 72 Supports for Community Living and 6 Acquired Brain Injury.

Significant changes to the program included the incorporation of goods and services by regulation. Beginning February 2008, Medicaid members who selected Consumer Directed Option were able to purchase goods and minor home adaptations such as incontinent supplies, nutritional supplies and grab bars. The expansion of support broker services to the Community Mental Health Centers began in July 2008 to assist with the expanding CDO/Support for Community Living (SCL) and Acquired Brain Injury (ABI) community and the newly implemented Michelle P Waiver.

CHFS Public Guardianship Program

Kentucky's public guardianship program was transferred to the Department for Aging and Independent Living on June 15, 2008 as the Division of Guardianship. The Division has offices and staff in each region of Kentucky.

Guardianship is a legal relationship for adults between a court appointed party that assumes the responsibility of guardian and a person who has been declared "legally disabled", either wholly or partially, by the court. This person must be unable to care for their personal needs and/or unable to manage financial their resources. If no family member, friend or neighbor is willing to serve or able to care for the individual, then, as a last resort, a state guardian will be appointed by the court. If the court appoints a guardian because the individual has a total disability they would lose such rights as the right to vote, the right to drive a car, the right to make medical decisions, the right to determine where to live, the right to dispose of property and the right to execute instruments such as writing checks, getting married or writing a will. Loss of specific rights will be identified in the disability order by the judge.

The Division of Guardianship currently serves 2661 individuals across all 120 counties in the Commonwealth. It is the goal of the Division to assist these individuals to be able to achieve the best quality of life within the boundaries of their disability.

The Traumatic Brain Injury Trust Fund Program

The Traumatic Brain Injury (TBI) Trust Fund Program was established to provide assistance to children and adults with brain injuries. The TBI Trust Fund Program is a funding source of last resort for Kentucky residents. The TBI Trust Fund Program is administered by a Board of Directors to assure that individuals with a brain injury and their families are provided effective services and supports to promote independence and personal productivity. The TBI Trust Fund offers a range of services to qualified individuals for the sole purpose of providing the supports needed to maintain living in the community.

Appendix A Subcommittees

Investigation Sub-Committee

The Investigation Sub-Committee determines the process to most efficiently and effectively investigate, substantiate and prosecute elder maltreatment cases. The sub-committee determines how best to coordinate between police, APS, prosecuting attorneys and others throughout the life of a case. The “as is” and the “optimal” model will be mapped with the intent of creating a holistic investigative design.

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Training Sub-Committee

The Training Sub-Committee is charged with developing curricula and recommendations for training implementation related to expanded elder abuse training requirements as a result of HB 298. The sub-committee has completed a needs assessment related to training provisions with others required in KRS Chapter 209, including law enforcement, judges and mental health professionals.

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Public Awareness Sub-Committee

The Public Awareness Sub-Committee is charged with the review of statewide elder abuse issues and concerns and development of recommendations for community awareness and prevention programs and services to carry out the intent of HB-298, including;

- Development of a Comprehensive Resource Guide for Service Accessibility
- Enhancement of public awareness campaigns for Elder Abuse, Neglect and Exploitation
- Forums for the exchange of information to educate the elder population, their families, professionals, and the community on elder rights and abuse prevention

The sub-committee's primary purpose is to insure that Kentucky's senior adult population is protected from abuse, neglect, and exploitation and that their civil rights, autonomy and dignity are protected.

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Data Sub-Committee

The Data Sub-Committee is charged with managing the flow of data between DCBS and its partnering agencies. Additionally, the sub-committee analyzes existing data and explores the need for additional data sources. Since the Elder Abuse Committee is charged with enhancing information flow concerning dispositions of APS cases with law enforcement and other authorized agencies, this sub-committee has been tasked with creating an electronic enhancement to the existing system.

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Guardianship Sub-Committee

The Guardianship Sub-Committee is to discern the shape of guardianship in Kentucky, recommend a model program, educate the general assembly, recommend most effective and efficient use of current funds for the public guardianship program, and request additional funds for guardianship. The sub-committee examines both the Cabinet's public guardianship program or the guardianship system in general across the state.

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Appendix B
Data

60 Plus Population

Statewide Data for SFY 2004 - SFY 2008 *

Total Adult Protective Services for 60-Plus Population

	SFY04	SFY05	SFY06	SFY07	SFY08
Total # of Reports	7676	9136	9386	9660	11506
Total # of Investigations	5043	5179	6548	6442	7783
Total # of Investigations Substantiated	1471	1543	1844	1762	2152
Total # of Information and Referral Services	1010	2333	2002	2416	2824
Total # of General Adult Services	1623	1624	2200	1761	1984

Total # of Allegations by Type within an Investigation for 60-Plus Population

	SFY04	SFY05	SFY06	SFY07	SFY08
Adult Abuse	1281	1145	1093	1042	1262
Spouse Abuse	399	360	368	373	402
Partner Abuse	81	89	69	79	104
Neglect by Caretaker	1942	2031	2161	2093	2640
Self Neglect	1719	1733	1831	1843	2304
Exploitation	858	945	1026	1012	1071

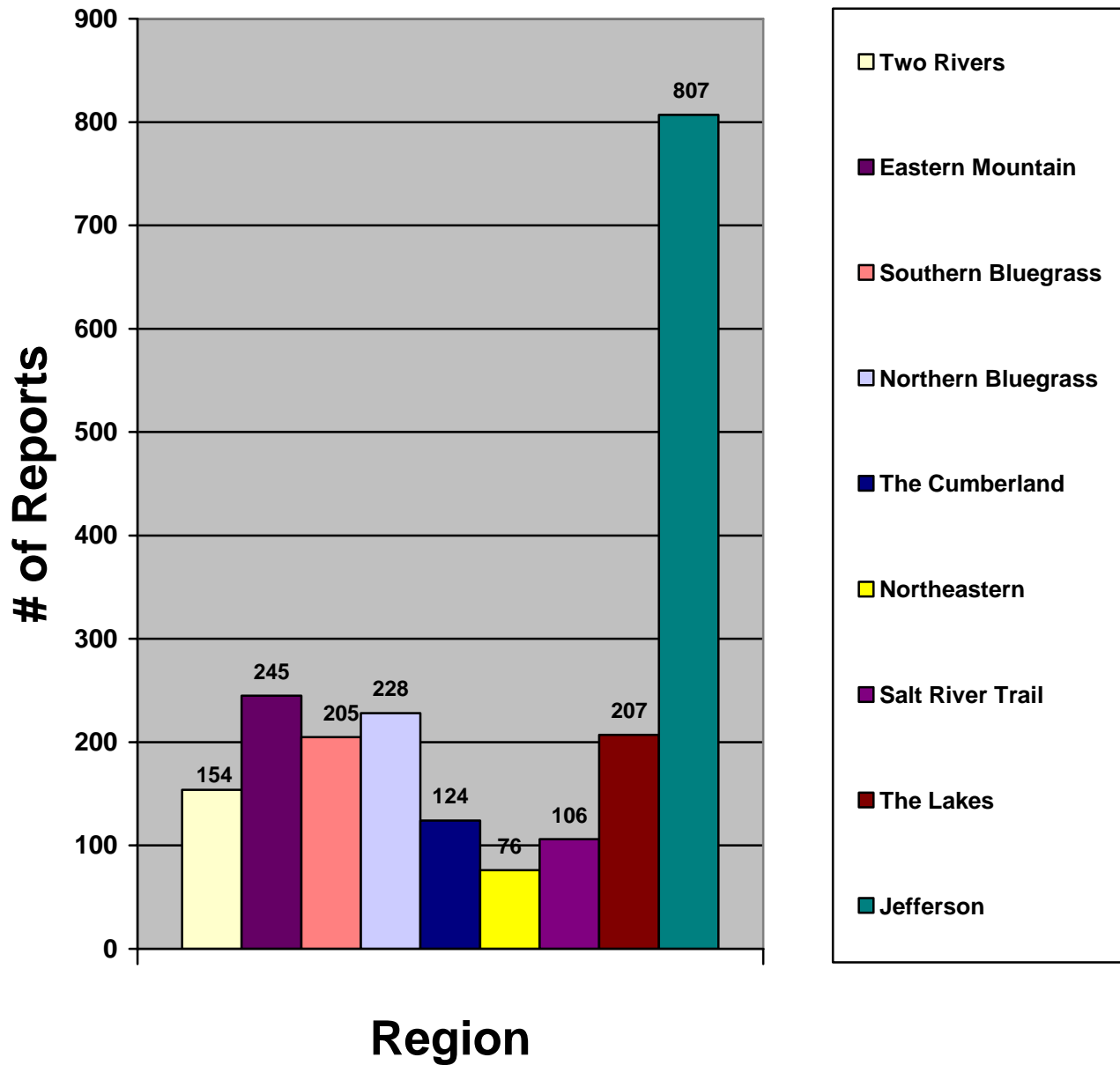
Total # of Investigations Substantiated by Type for 60-Plus Population

	SFY04	SFY05	SFY06	SFY07	SFY08
Adult Abuse	229	240	273	242	303
Spouse Abuse	85	93	85	84	70
Partner Abuse	17	24	15	14	28
Neglect by Caretaker	300	323	331	347	375
Self Neglect	620	623	631	619	856
Exploitation	220	240	250	236	260

	SFY04	SFY05	SFY06	SFY07	SFY08
Number of Criminal Charges Filed Related to					
KRS Chapter 209 (60-Plus Population)	187	238	320	366	371

*Kentucky State Fiscal Year: July 1st – June 30th

Total Number of Substantiated 60 plus APS Reports by Region for SFY 2008



18 to 59 Population

Statewide Data for SFY 2004 - SFY 2008 *

Total Adult Protective Services for 18 to 59 Population

	SFY04	SFY05	SFY06	SFY07	SFY08
Total # of Reports	32733	38660	36806	35388	43195
Total # of Investigations	21876	22477	22344	21480	23464
Total # of Investigations	5942	5968	5860	5576	5794
Total # of Information and Referral Services	8115	14671	13256	12428	17689
Total # of General Adult Services	2742	1512	1541	1480	1586

Total # of Allegations by Type within an Investigation for 18 to 59 Population

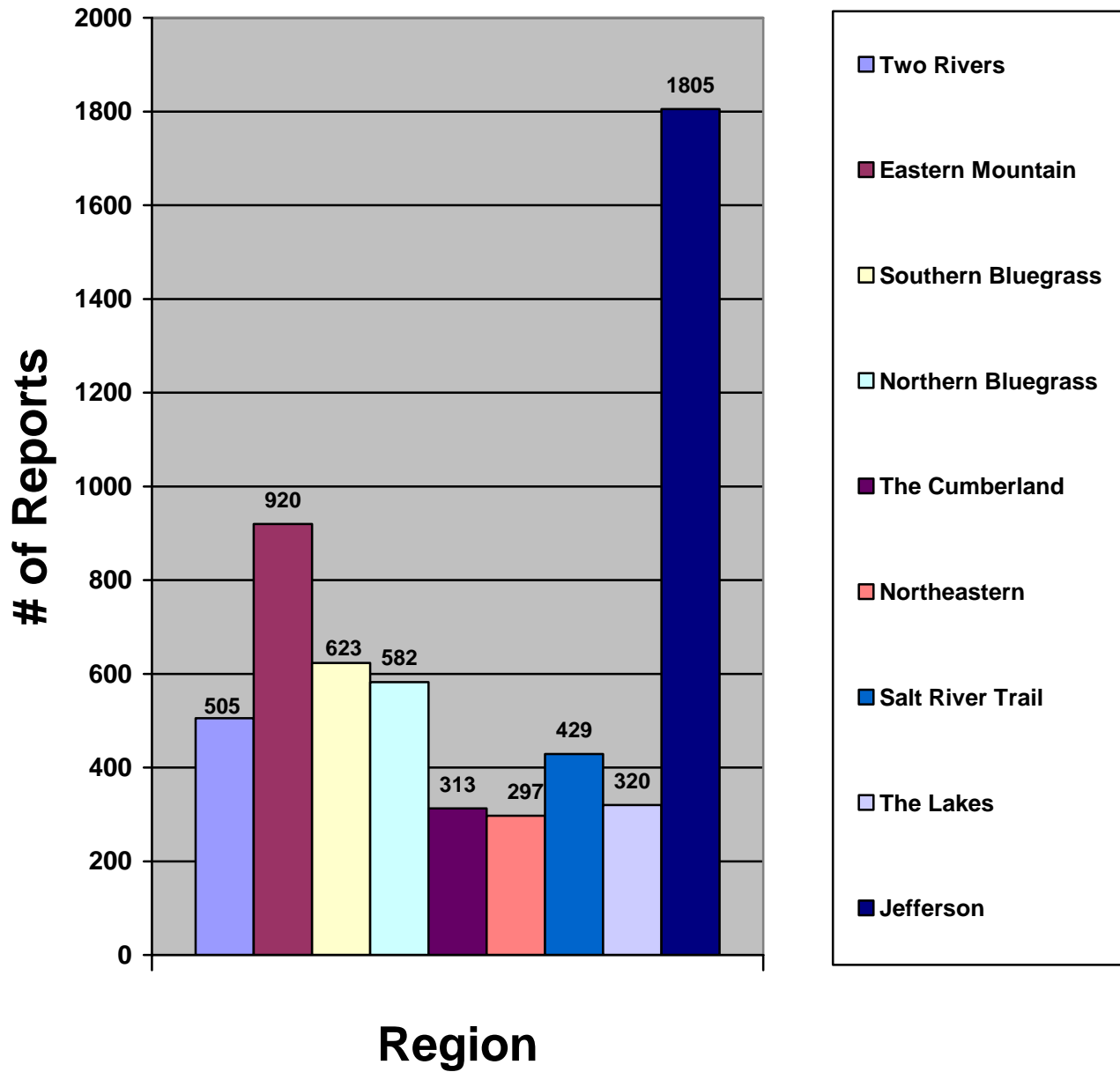
	SFY04	SFY05	SFY06	SFY07	SFY08
Adult Abuse	4674	2548	1713	1394	1227
Spouse Abuse	12398	10882	10012	9463	10221
Partner Abuse	8562	8362	7901	7954	8466
Neglect by Caretaker	1134	1234	1285	1251	1776
Self Neglect	843	871	977	1003	1280
Exploitation	381	425	456	415	494

Total # of Investigations Substantiated by Type for 18-59 Population

	SFY04	SFY05	SFY06	SFY07	SFY08
Adult Abuse	475	280	222	211	260
Spouse Abuse	3093	2970	2576	2360	2226
Partner Abuse	1768	2017	1805	1839	1844
Neglect by Caretaker	218	255	288	271	334
Self Neglect	331	378	427	445	578
Exploitation	57	68	97	89	100

*Kentucky State Fiscal Year: July 1st - June 30th

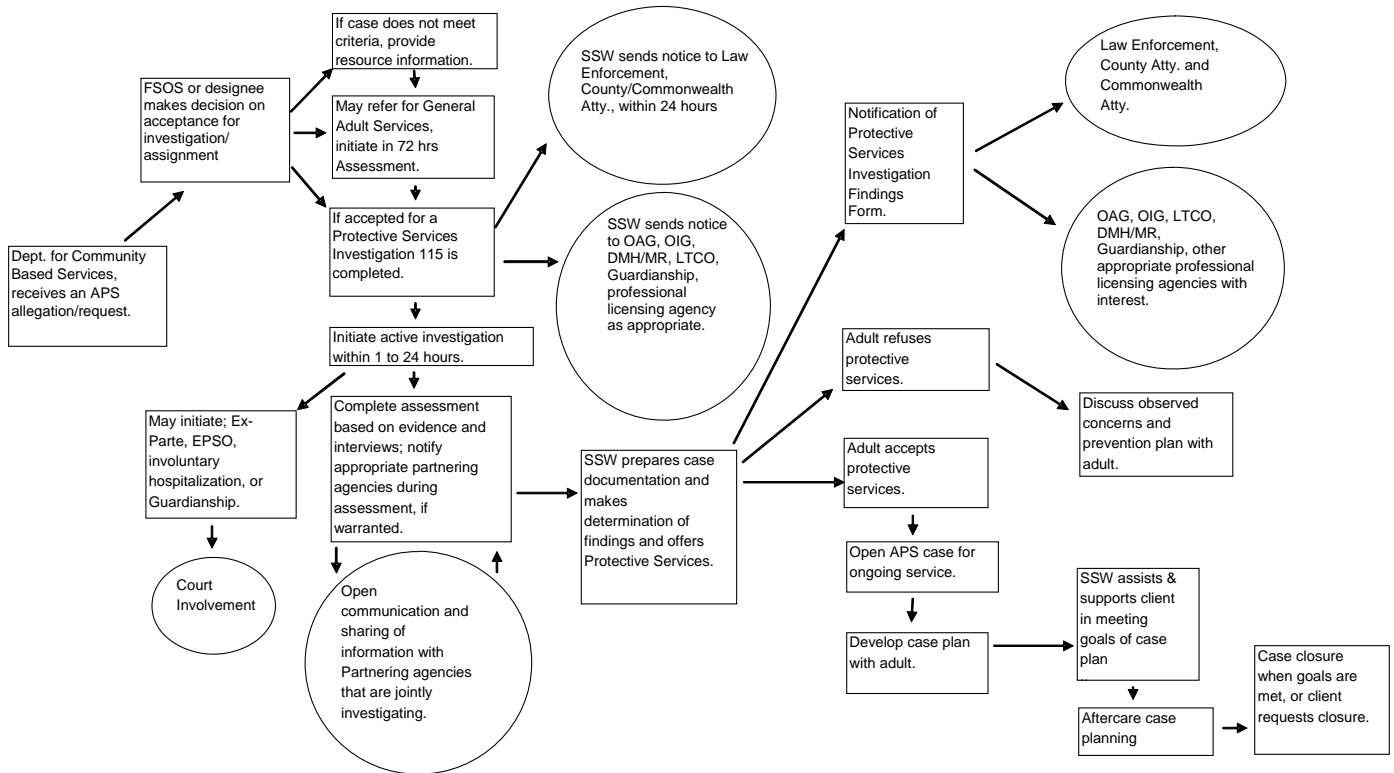
Total Number of Substantiated 18 - 59 APS Reports by Region for SFY 2008



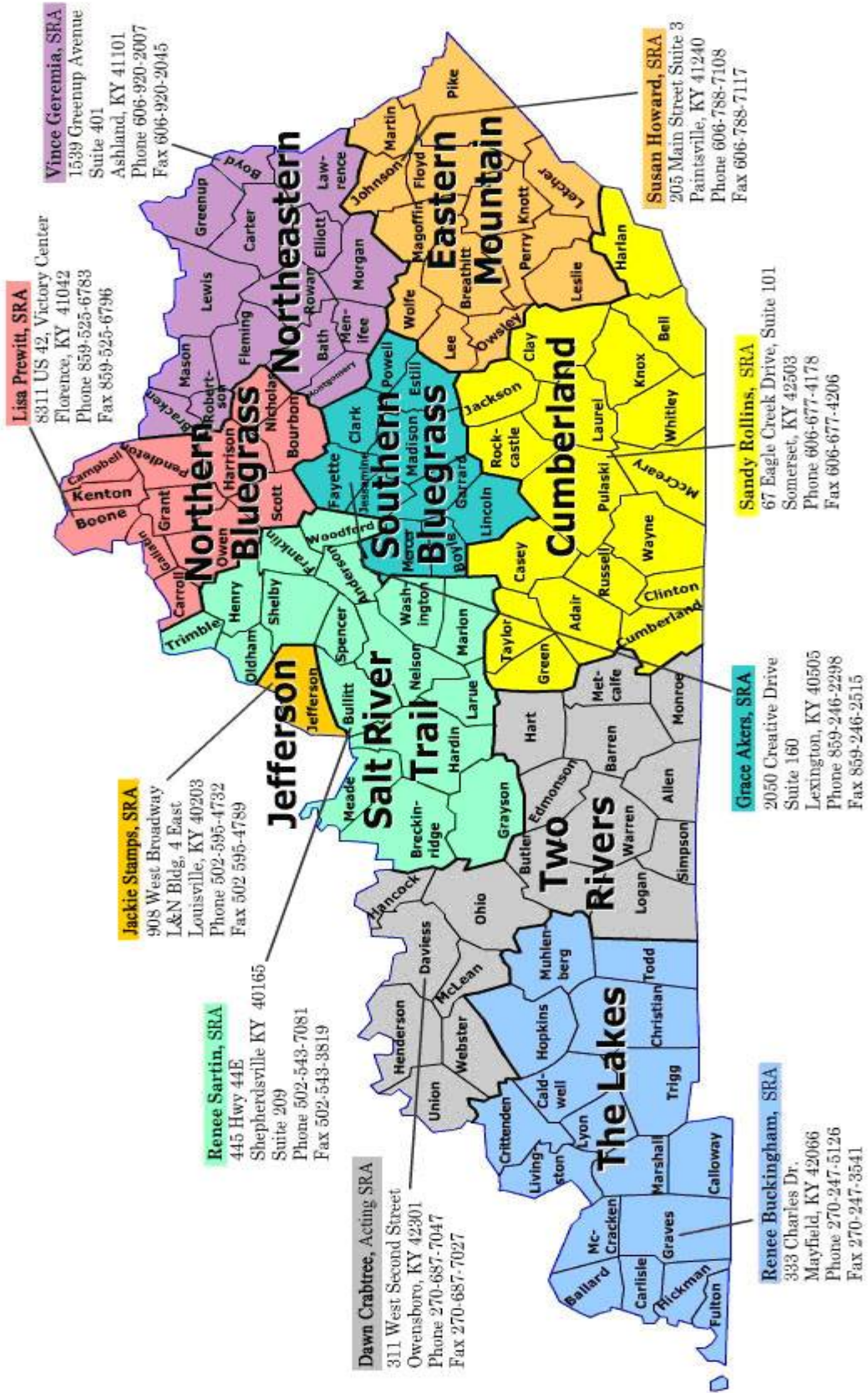
Appendix C Figures

DCBS Adult Protective Services Process Map

The Department for Community Based Services is statutorily charged (KRS 209.010) with the provision of protective services for dysfunctional adults. This process is accomplished through a multidisciplinary approach outlined in the following diagram.



DCBS Service Regions



Appendix D
KRS Chapter 209 and 922 KAR 5:070

KRS Chapter 209

Kentucky Adult Protection Act

209.005 Elder Abuse Committee -- Membership -- Duties -- Annual report.

- (1) The Cabinet for Health and Family Services shall create an Elder Abuse Committee to develop a model protocol on elder abuse and neglect in the Commonwealth, that shall be comprised of various agency representatives that include, but are not limited to:
 - (a) The Department for Community Based Services;
 - (b) The Department for Public Health;
 - (c) The Department for Mental Health and Mental Retardation;
 - (d) The Division of Aging Services;
 - (e) The Division of Health Care Facilities and Services;
 - (f) The Office of the Ombudsman;
 - (g) Area Agencies on Aging;
 - (h) Local and state law enforcement official; and
 - (i) Prosecutors.
- (2) The committee shall address issues of prevention, intervention, investigation, and agency coordination of services on a state and local level through interaction with local groups or entities that either directly or indirectly provide services to the elder population, including, but not limited to:
 - (a) Senior citizen centers;
 - (b) Local governmental human service groups;
 - (c) The Sanders-Brown Center on Aging at the University of Kentucky;
 - (d) Long Term Care Ombudsmen; and
 - (e) Other organizations or associations dedicated to serving elder citizens and their families in the Commonwealth.
- (3) The committee shall:
 - (a) Recommend a model protocol for the joint multidisciplinary investigation of reports of suspected abuse, neglect, or exploitation of the elderly;
 - (b) Recommend practices to assure timely reporting of referrals of abuse, neglect, or exploitation required under KRS 209.030(12);
 - (c) Explore the need for a comprehensive statewide resource directory of services for the elderly;
 - (d) Enhance existing public awareness campaigns for elder abuse and neglect; and
 - (e) Provide forums for the exchange of information to educate the elder population and their families on the rights of elders.
- (4) The committee shall produce an annual report of their activities, products, and recommendations for public policy to the Governor and the Legislative Research Commission.

209.010 Purpose and application of chapter.

- (1) The purpose of this chapter is:
 - (a) To provide for the protection of adults who may be suffering from abuse, neglect, or exploitation, and to bring said cases under the purview of the Circuit or District Court;
 - (b) To provide that any person who becomes aware of such cases shall report them to a representative of the cabinet, thereby causing the protective services of the state to be brought to bear in an effort to protect the health and welfare of these adults in need of protective services and to prevent abuse, neglect, or exploitation; and
 - (c) To promote coordination and efficiency among agencies and entities that have a responsibility to respond to the abuse, neglect, or exploitation of adults.
- (2) This chapter shall apply to the protection of adults who are the victims of abuse, neglect, or exploitation inflicted by a person or caretaker. It shall not apply to victims of domestic violence unless the victim is also an adult as defined in KRS 209.020(4).

209.020 Definitions for chapter.

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

- (1) "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 eighteen (18) years of age or older who, because of mental or physical dysfunctioning, is unable to manage his own resources, carry out the activity of daily living, or protect himself from neglect, exploitation, or a hazardous or abusive situation without assistance from others, and who may be in need of protective services;
- (5) "Protective services" means agency services undertaken with or on behalf of an adult in need of protective services who is being abused, neglected, or exploited. These services may include, but are not limited to conducting investigations of complaints of possible abuse, neglect, or exploitation to ascertain whether or not the situation and condition of the adult in need of protective services warrants further action; social services aimed at preventing and remedying abuse, neglect, and exploitation; and services directed toward seeking legal determination of whether or not the adult in need of protective services has been abused, neglected, or exploited and to ensure that he obtains suitable care in or out of his home;
- (6) "Caretaker" means an individual or institution who has been entrusted with or who has the responsibility for the care of the adult as a result of family relationship, or who has assumed the responsibility for the care of the adult person voluntarily or by contract, employment, legal duty, or agreement;
- (7) "Deception" means, but is not limited to:
 - (a) Creating or reinforcing a false impression, including a false impression as to law, value, intention, or other state of mind;
 - (b) Preventing another from acquiring information that would affect his or her judgment of a transaction; or
 - (c) Failing to correct a false impression that the deceiver previously created or reinforced, or that the deceiver knows to be influencing another to whom the person stands in a fiduciary or confidential relationship;
- (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;
- (10) "Investigation" shall include, but is not limited to:
 - (a) A personal interview with the individual reported to be abused, neglected, or exploited. 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;
 - (b) An assessment of individual and environmental risk and safety factors;
 - (c) Identification of the perpetrator, if possible; and
 - (d) Identification by the Office of Inspector General of instances of failure by an administrator or management personnel of a regulated or licensed facility to adopt or enforce appropriate policies and procedures, if that failure contributed to or caused an adult under the facility's care to be abused, neglected, or exploited;
- (11) "Emergency" means that an adult is living in conditions which present a substantial risk of death or immediate and serious physical harm to himself or others;
- (12) "Emergency protective services" are protective services furnished an adult in an emergency;
- (13) "Protective placement" means the transfer of an adult from his present living arrangement to another;
- (14) "Court" means the Circuit Court or the District Court if no judge of that Circuit Court is present in the county;
- (15) "Records" means the medical, mental, health, and financial records of the adult that are in the possession of any hospital, firm, corporation, or other facility, if necessary to complete the investigation mandated in this chapter. These records shall not be disclosed for any purpose other than the purpose for which they have been obtained;
- (16) "Neglect" means a situation in which an adult is unable to perform or obtain for himself the goods or services that are necessary to maintain his health or welfare, or the deprivation of services by a caretaker that are necessary to maintain the health and welfare of an adult; and

(17) "Authorized agency" means:

- (a) The Cabinet for Health and Family Services;
- (b) A law enforcement agency or the Kentucky State Police;
- (c) The office of a Commonwealth's attorney or county attorney; or
- (d) The appropriate division of the Office of the Attorney General.

**209.030 Administrative regulations -- Reports of adult abuse, neglect, or exploitation -- Cabinet actions -
- Status and disposition reports.**

- (1) The secretary may promulgate administrative regulations in accordance with KRS Chapter 13A to effect the purposes of this chapter. 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, alternate care facility employee, or caretaker, having reasonable cause to suspect that an adult has suffered abuse, neglect, or exploitation, 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, neglect, or exploitation 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, or of any other person responsible for his care;
 - (b) The age of the adult;
 - (c) The nature and extent of the abuse, neglect, or exploitation, including any evidence of previous abuse, neglect, or exploitation;
 - (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, neglect, or exploitation.
- (5) Upon receipt of the report, the cabinet shall conduct an initial assessment and take the following action:
 - (a) Notify within twenty-four (24) hours of the receipt of the report the appropriate law enforcement agency. If information is gained through assessment or investigation relating to emergency circumstances or a potential crime, the cabinet shall immediately notify and document notification to the appropriate law enforcement agency;
 - (b) Notify each appropriate authorized agency. The cabinet shall develop standardized procedures for notifying each appropriate authorized agency when an investigation begins and when conditions justify notification during the pendency of an investigation;
 - (c) Initiate an investigation of the complaint; and
 - (d) Make a written report of the initial findings together with a recommendation for further action, if indicated.
- (6)
 - (a) The cabinet shall, to the extent practicable, coordinate its investigation with the appropriate law enforcement agency and, if indicated, any appropriate authorized agency or agencies.
 - (b) The cabinet shall, to the extent practicable, support specialized multidisciplinary teams to investigate reports made under this chapter. This team may include law enforcement officers, social workers, Commonwealth's attorneys and county attorneys, representatives from other authorized agencies, medical professionals, and other related professionals with investigative responsibilities, as necessary.
- (7) 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. Any representative of the cabinet actively involved in the conduct of an abuse, neglect, or exploitation investigation under this chapter shall also be allowed access to financial records and the mental and physical health records of the adult which are in the possession of any hospital, firm, financial institution, corporation, or other facility if necessary to complete the investigation mandated by this chapter. These records shall not be disclosed for any purpose other than the purpose for which they have been obtained.
- (8) Any representative of the cabinet may with consent of the adult or caretaker enter any private premises where any adult alleged to be abused, neglected, or exploited is found in order to investigate the need for protective services for the purpose of carrying out the provisions of this chapter. If the adult or caretaker does not

consent to the investigation, a search warrant may be issued upon a showing of probable cause that an adult is being abused, neglected, or exploited, to enable a representative of the cabinet to proceed with the investigation.

- (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, the caretaker shall not interfere with the cabinet when rendering such services.
- (11) The cabinet shall consult with local agencies and advocacy groups, including but not limited to long-term care ombudsmen, law enforcement agencies, bankers, attorneys, providers of nonemergency transportation services, and charitable and faith-based organizations, to encourage the sharing of information, provision of training, and promotion of awareness of adult abuse, neglect, and exploitation, crimes against the elderly, and adult protective services.
- (12) (a) By November 1 of each year and in accordance with state and federal confidentiality and open records laws, each authorized agency that receives a report of adult abuse, neglect, or exploitation shall submit a written report to the cabinet that provides the current status or disposition of each case referred to that agency by the cabinet under this chapter during the preceding year. The Elder Abuse Committee established in KRS 209.005 may recommend practices and procedures in its model protocol for reporting to the cabinet under this section.
(b) By December 30 of each year, the cabinet shall provide a written report to the Governor and the Legislative Research Commission that summarizes the status of and actions taken on all reports received from authorized agencies and specific departments within the cabinet under this subsection. The cabinet shall identify any report required under paragraph (a) of this subsection that is not received by the cabinet. Identifying information about individuals who are the subject of a report of suspected adult abuse, neglect, or exploitation shall not be included in the report under this paragraph. The report shall also include recommendations, as appropriate, to improve the coordination of investigations and the provision of protective services. The cabinet shall make the report available to community human services organizations and others upon request.

209.035 Cabinet's authority to promulgate administrative regulations on general adult services.

The cabinet shall promulgate administrative regulations for the provision of general adult services to include uniform criteria for adult intake and appropriate and necessary service provision.

209.040 Remedies -- Injunctive relief.

Any court may upon proper application by the cabinet issue a restraining order or other injunctive relief to prohibit any violation of this chapter, regardless of the existence of any other remedy at law.

209.050 Immunity from civil or criminal liability.

Anyone acting upon reasonable cause in the making of any report or investigation or participating in the filing of a petition to obtain injunctive relief or emergency protective services for an adult 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 report or investigation and such immunity shall apply to those who render protective services in good faith pursuant either to the consent of the adult or to court order.

209.060 Privileged relationships not ground for excluding evidence.

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

209.080 Title.

This chapter may be cited as the Kentucky Adult Protection Act.

209.090 Legislative intent.

The General Assembly of the Commonwealth of Kentucky recognizes that some adults of the Commonwealth are unable to manage their own affairs or to protect themselves from abuse, neglect, or exploitation. Often such persons cannot find others able or willing to render assistance. The General Assembly intends, through this chapter, to establish a system of protective services designed to fill this need and to assure their availability to all adults. It is also the intent of the General Assembly to authorize only the least possible restriction on the exercise of personal and civil rights consistent with the person's needs for services, and to require that due process be followed in imposing such restrictions.

209.100 Emergency protective services.

- (1) If an adult lacks the capacity to consent to receive protective services in an emergency, these services may be ordered by a court on an emergency basis through an order pursuant to KRS 209.110, provided that:
 - (a) The adult is in a state of abuse or neglect and an emergency exists;
 - (b) The adult is in need of protective services;
 - (c) The adult lacks the capacity to consent and refuses to consent to such services; and
 - (d) No person authorized by law or court order to give consent for the adult is available to consent to emergency protective services or such person refuses to give consent.
- (2) In ordering emergency protective services, the court shall authorize only that intervention which it finds to be the least restrictive of the individual's liberty and rights while consistent with his welfare and safety.

209.110 Petition -- Guardian ad litem -- Summons -- Notice -- Hearing -- Report to court -- Fee.

- (1) A petition by the cabinet for emergency protective services shall be verified by an authorized representative of the cabinet and shall set forth the name, age, and address of the adult in need of protective services; the nature of the disability of the adult, if determinable; the proposed protective services; the petitioner's reasonable belief, together with the facts supportive thereof, as to the existence of the facts, and the facts showing the petitioner's attempts to obtain the adult's consent to the services and the outcomes of such attempts. The petition and all subsequent court documents shall be entitled: "In the interest of-----, an adult in need of protective services." The petition shall be filed in the court of the adult's residence, or if filed pursuant to KRS 209.130, the court of the county in which the adult is physically located.
- (2) When a petition for emergency protective services is filed, the court or the clerk shall immediately appoint a guardian ad litem to represent the interest of the adult. The duties of a guardian ad litem representing an adult for whom a petition for emergency protective services has been filed shall include personally interviewing the adult, counseling with the adult with respect to this chapter, informing him of his rights and providing competent representation at all proceedings, and such other duties as the court may order.
- (3) Following the filing of a petition, a summons shall be issued and served with a copy of the petition, and notice of the time, date and location of the hearing to be held on the petition. Service shall be made upon the adult and his guardian or, if none, his caretaker. Should the adult have no guardian or caretaker, service shall be made upon the adult's guardian ad litem. Notice of the hearing shall be given to the adult's spouse, or, if none, to his adult children or next of kin, unless the court is satisfied that notification would be impractical. Service shall not be made upon any person who is believed to have perpetrated the abuse, neglect, or exploitation. Service of the petition shall be made at least three (3) calendar days prior to the hearing for emergency protective services.
- (4) The hearing on the petition for an emergency order for protective services shall be heard under the following conditions:
 - (a) The hearing on the petition, in the interests of expedition, may be held in any county within the judicial district or circuit served by the court. The court shall give priority to the holdings of the hearings pursuant to petitions filed under this chapter;
 - (b) The adult or his representative may present evidence and cross-examine witnesses; and
 - (c) The adult or his representative may petition the court to have any order which is entered pursuant to this chapter, set aside or modified for good cause.
- (5) Where protective services are rendered on the basis of an order pursuant to this section, the cabinet shall submit a report to the court describing the circumstances including the name, place, date, and nature of the services. Such report shall be made at least once or on a monthly basis if protective services are provided the adult for a period of longer than one (1) month.

- (6) The fee of the guardian ad litem shall be paid by the cabinet not to exceed three hundred dollars (\$300). This fee is not to be paid to attorneys employed by government funded legal services programs.

209.120 Findings by court -- Limitations of court's power -- Termination of order.

- (1) Upon petition by the cabinet a court may issue an order authorizing the provision of emergency protective services to an adult after a hearing and upon a finding based on a preponderance of the evidence that:
 - (a) The adult is in a state of abuse, neglect, or exploitation and is living in conditions which present a substantial risk of death or immediate and serious physical harm to himself or others;
 - (b) The adult is in need of protective services;
 - (c) The adult lacks the capacity to consent to such services; and
 - (d) No person authorized by law or court order to give consent for the adult is available to consent to protective services or such person refuses to give consent.
- (2) In issuing an emergency order the court shall adhere to the following limitations:
 - (a) Only such protective services, including medical and surgical care and protective placement, as are necessary to remove the conditions creating the emergency shall be covered, and the court shall specifically designate the approved services in its order. Such designation of approved services shall be deemed to be the consent of the court authorizing the provision of such services.
 - (b) Protective services authorized by the court shall not include hospitalization or protective placement unless the court specifically finds such action is necessary and gives specific approval for such action in its order.
 - (c) The issuance of an emergency order shall not deprive the adult of any rights except to the extent validly provided for in the order.
 - (d) To implement an order, the court may authorize forcible entry of the premises of the adult for the purpose of rendering protective services or transporting the adult to another location for the provision of such services. Authorized forcible entry shall be accomplished by a peace officer accompanied by a representative of the cabinet.
- (3) If the court finds, pursuant to a hearing, that the adult is in need of protective services, and should that adult have a guardian who has been derelict in providing for the welfare of the adult, the court shall have the discretion to remove the guardian and appoint another guardian, if an individual is available, willing, and able to function as guardian; such removal and appointment shall be in compliance with the provisions of KRS Chapter 387. It is not necessary for the court to find a guardian has been derelict as a requirement for the issuance of an order for protective services.
- (4) If the court finds that protective services are no longer needed by the adult, the court shall order the emergency protective services to terminate.

209.130 Ex parte order of court -- Implementation.

- (1) When from an affidavit or sworn testimony of an authorized representative of the cabinet, it appears probable that an adult will suffer immediate and irreparable physical injury or death if protective services are not immediately provided, and it appears that the adult is incapable of giving consent, the court may assume jurisdiction and issue an ex parte order providing that certain specific protective services be provided the adult. The court shall not authorize such protective services except those specifically designed to remove the adult from conditions of immediate and irreparable physical injury or death. A copy of the order shall be served upon the adult and his guardian, or if none, his caretaker. Service shall not be made upon the person or caretaker who is believed to have perpetrated the abuse, neglect, or exploitation.
- (2) To implement an ex parte order, the court may authorize forcible entry of the premises of the adult for the purpose of rendering protective services or transporting the adult to another location for the provision of such services. Authorized forcible entry shall be accomplished by a peace officer accompanied by a representative of the cabinet.
- (3) Upon the issuance of an ex parte order, the cabinet must file a petition as soon as possible. A hearing must be held within seventy-two (72) hours, exclusive of Saturdays and Sundays, from the issuance of an ex parte order.

209.140 Confidentiality of information.

All information obtained by the department staff or its delegated representative, as a result of an investigation made pursuant to this chapter, shall not be divulged to anyone except:

- (1) Persons suspected of abuse or neglect or exploitation, provided that in such cases names of informants may be withheld, unless ordered by the court;
- (2) Persons within the department or cabinet with a legitimate interest or responsibility related to the case;
- (3) Other medical, psychological, or social service agencies, or law enforcement agencies that have a legitimate interest in the case;
- (4) Cases where a court orders release of such information; and
- (5) The alleged abused or neglected or exploited person.

209.150 Who may make criminal complaint.

Any representative of the cabinet acting officially in that capacity, any person with personal knowledge of the abuse or neglect, or exploitation of an adult by a caretaker, or an adult who has been abused or neglected or exploited shall have standing to make a criminal complaint.

209.160 Spouse abuse shelter fund -- Department of Revenue to administer -- Cabinet for Health and Family Services to use -- Primary service providers.

- (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.

209.170 Staffing requirements.

The Cabinet for Health and Family Services shall provide for sufficient social worker staff to implement the provisions of this chapter. This staff shall obtain the training provided under KRS 194A.545.

209.180 Prosecution of adult abuse, neglect, and exploitation.

- (1) If adequate personnel are available, each Commonwealth's attorney's office and each county attorney's office shall have an attorney trained in adult abuse, neglect, and exploitation.
- (2) Commonwealth's attorneys and county attorneys, or their assistants, shall take an active part in interviewing the adult alleged to have been abused, neglected, or exploited, and shall inform the adult about the proceedings throughout the case.
- (3) If adequate personnel are available, Commonwealth's attorneys and county attorneys shall provide for an arrangement that allows one (1) lead prosecutor to handle the case from inception to completion to reduce the number of persons involved with the adult victim.
- (4) Commonwealth's attorneys, county attorneys, cabinet representatives, and other members of multidisciplinary teams shall minimize the involvement of the adult in legal proceedings, avoiding appearances at preliminary hearings, grand jury hearings, and other proceedings when possible.
- (5) Commonwealth's attorneys, county attorneys, and victim advocates employed by Commonwealth's attorneys or county attorneys shall make appropriate referrals for counseling, private legal services, and other appropriate services to ensure the future protection of the adult when a decision is made not to prosecute the case. The Commonwealth's attorney or county attorney shall explain the decision not to prosecute to the family or guardian, as appropriate, and to the adult victim.

209.190 Prosecutor's manual.

The Attorney General, in consultation with legal, victim services, victim advocacy, and mental health professionals with an expertise in crimes against the elderly, shall develop a prosecutor's manual for Commonwealth's attorneys and county attorneys establishing the policies and procedures for the prosecution of crimes against the elderly. The manual shall be completed no later than January 1, 2006, and shall be revised by July 31 of every even-numbered year after 2007. The Attorney General shall distribute a copy of the manual to every Commonwealth's attorney and county attorney.

209.195 Electronic development of and access to educational and training courses and materials.

Educational and training courses and materials required under KRS 15.760, 21A.170, 69.350, 194A.540. and 194A.545 may be developed and accessed by computer, Internet, or other electronic technology. Agencies are encouraged to post and maintain the programs on their Web sites.

209.990 Penalties.

- (1) Anyone knowingly or wantonly violating the provisions of KRS 209.030(2) shall be guilty of a Class B misdemeanor as designated in KRS 532.090. Each violation shall constitute a separate offense.
- (2) Any person who knowingly abuses or neglects an adult is guilty of a Class C felony.
- (3) Any person who wantonly abuses or neglects an adult is guilty of a Class D felony.
- (4) Any person who recklessly abuses or neglects an adult is guilty of a Class A misdemeanor.
- (5) Any person who knowingly exploits an adult, resulting in a total loss to the adult of more than three hundred dollars (\$300) in financial or other resources, or both, is guilty of a Class C felony.
- (6) Any person who wantonly or recklessly exploits an adult, resulting in a total loss to the adult of more than three hundred dollars (\$300) in financial or other resources, or both, is guilty of a Class D felony.
- (7) Any person who knowingly, wantonly, or recklessly exploits an adult, resulting in a total loss to the adult of three hundred dollars (\$300) or less in financial or other resources, or both, is guilty of a Class A misdemeanor.

922 KAR 5:070

Adult Protective Services

RELATES TO: KRS 61.872, 194A.010, 209.005 -209.200, 202A.051, 202B.100, 387.540(1)

STATUTORY AUTHORITY: KRS 194A.050(1), 209.030(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the secretary to adopt all administrative regulations necessary under applicable state laws to protect, develop, and maintain the health, personal dignity, integrity, and sufficiency of the individual citizens of the Commonwealth and necessary to operate the programs and fulfill the responsibilities vested in the cabinet. KRS 209.030(1) authorizes the secretary to promulgate administrative regulations necessary for the implementation of adult protective services. This administrative regulation establishes the procedures for investigation and protection of adults who are suffering or at risk of abuse, neglect, or exploitation.

Section 1. Definitions. (1) "Abuse" is defined by KRS 209.020(8).

- (2) "Adult" is defined by KRS 209.020(4).
- (3) "Authorized agency" is defined by KRS 209.020(17).
- (4) "Caretaker" is defined by KRS 209.020(6).
- (5) "Emergency" is defined by KRS 209.020(11).
- (6) "Exploitation" is defined by KRS 209.020(9).
- (7) "Investigation" is defined by KRS 209.020(10).
- (8) "Neglect" is defined by KRS 209.020(16).
- (9) "Protective services" is defined by KRS 209.020(5).
- (10) "Records" is defined by KRS 209.020(15).

Section 2. Receiving a Report. (1) An individual suspecting that an adult has suffered abuse, neglect, or exploitation shall:

- (a) Report to the cabinet in accordance with KRS 209.030(2) and (3); and
 - (b) Provide the information specified in KRS 209.030(4).
- (2) The identity of the reporting individual shall remain confidential in accordance with KRS 209.140.
- (3) The cabinet shall make available a twenty-four (24) hour on-call response system for emergency reporting after normal office hours.
- (4) The cabinet shall investigate an anonymous report that provides sufficient information regarding the alleged abuse, neglect, or exploitation of an adult.
- (5) If a report does not meet criteria for investigation, the cabinet may refer the reporting source to:
- (a) Community resources;
 - (b) General adult services in accordance with 922 KAR 5:090; or
 - (c) Domestic violence protective services in accordance with 922 KAR 5:102.
- (6) Upon accepting a report for investigation of alleged adult abuse, neglect, or exploitation, the cabinet shall:
- (a) Conduct an initial assessment and initiate an investigation in accordance with KRS 209.030(5); and
 - (b) Take into consideration the safety of the adult when proceeding with the actions necessary to initiate an investigation.
- (7) The cabinet shall initiate an investigation upon acceptance of a report of:
- (a) Abuse, as defined in KRS 209.020(8), if the report alleges:
 1. Marks that are or have been observed on an adult that another individual allegedly inflicted;
 2. Physical abuse inflicted upon the adult resulting in pain or injury, including a mental injury;
 3. An adult being hit in a critical area of the body, such as the head, face, neck, genitals, abdomen, and kidney areas; or
 4. An act of sexual abuse;
 - (b) Neglect, as defined in KRS 209.020(16), of an adult that may result in harm to the health and safety of the adult in the following areas:
 1. Hygiene neglect, if the adult has physical symptoms that require treatment due to poor care as a result of:
 - a. An act or omission by a caretaker; or
 - b. The absence of a caretaker;

2. Supervision neglect, if the reporting source has observed a physical health and safety risk to an adult resulting from a lack of necessary and appropriate supervision;
 3. Food neglect, if an adult shows symptoms of:
 - a. Malnutrition;
 - b. Dehydration;
 - c. Food poisoning; or
 - d. Lack of adequate food for a period of time that:
 - (i) Results in physical symptoms; or
 - (ii) Requires treatment;
 4. Environmental neglect, if a serious health and safety hazard is present, and the adult or the adult's caretaker is not taking appropriate action to eliminate the problem; or
 5. Medical neglect, if the adult is not receiving treatment for an injury, illness, or disability that:
 - a. Results in an observable decline in the adult's health and welfare;
 - b. May be life threatening; or
 - c. May result in permanent impairment;
 - (c) Exploitation of an adult, as defined in KRS 209.020(9), if the report alleges:
 1. Isolation from friends, relatives, or important information, such as:
 - a. Screening telephone calls;
 - b. Denying visitors; or
 - c. Intercepting mail;
 2. Physical or emotional dependency;
 3. Manipulation;
 4. Acquiescence; and
 5. Loss of resources; or
 - (d) An adult in need of protective services as defined in KRS 209.020(5).
- (8) If a report alleging the exploitation of an adult does not meet criteria established in subsection (7)(c) of this section, the report may be referred to an appropriate authorized agency or community resource.
- (9) The following criteria shall be used in identifying a report of adult abuse, neglect, or exploitation not requiring an adult protective service investigation:
- (a) The report does not meet the statutory definitions of:
 1. Adult; and
 - 2.a. Abuse;
 - b. Neglect; or
 - c. Exploitation; or
 - (b) There is insufficient information to:
 1. Identify or locate the adult; or
 2. Explore leads to identify or locate the adult.
- (10) For a report accepted for investigation of alleged adult abuse, neglect, or exploitation, designated regional cabinet staff shall:
- (a) Prepare an intake report on the "DPP-115, Confidential Suspected Abuse/Neglect, Dependency or Exploitation Reporting Form"; and
 - (b) Submit the DPP-115:
 1. For a determination of investigation assignment by cabinet supervisory staff;
 2. To the local guardianship office, if the adult is a state guardianship client; and
 3. To appropriate authorized agencies, as specified in KRS 209.030(5).

Section 3. Adult Protective Service Investigations. (1) The cabinet shall coordinate its investigation in accordance with KRS 209.030(6).

(2) An adult protective service investigation may include contact with the alleged perpetrator and collaterals, if the contact does not pose a safety concern for the adult or cabinet staff.

(3) Information obtained as a result of a protective service investigation shall be kept confidential in accordance with KRS 209.140.

(4) Requests for written information of the protective service investigation, except for court ordered releases, shall be handled through the open records process in accordance with KRS 61.872 and 922 KAR 1:510.

(5) Designated regional cabinet staff shall initiate the investigation of a report of adult abuse, neglect, or exploitation. If the accepted report of adult abuse, neglect, or exploitation with the expressed permission of the adult indicates:

- (a) An emergency, as defined in KRS 209.020(11), the investigation shall be initiated within one (1) hour; or
- (b) A nonemergency, the investigation shall be initiated within forty-eight (48) hours.

(6) If permission is granted by the adult, designated regional cabinet staff may take photographs, audio, or video recordings.

(7)(a) The cabinet shall obtain a written voluntary statement of adult abuse, neglect, or exploitation if the adult, witness, or alleged perpetrator is willing to provide the written statement; and

- (b) The cabinet shall inform the adult, witness or alleged perpetrator that the:
 - 1. Statement may be shared with appropriate authorized agencies; and
 - 2. Individual may be required to testify in a court of law.

(8) If investigating reports of alleged abuse or neglect of an adult resulting in death, designated regional cabinet staff shall:

- (a) Examine the coroner's or doctor's report;
- (b) Obtain a copy of the death certificate for the case record, if possible;
- (c) Notify the commissioner or designee;
- (d) Consult with appropriate law enforcement, in accordance with KRS 209.030(6)(a) in completing the investigation, if an adult died allegedly as a result of abuse or neglect; and
- (e) Determine if another resident in an alternate care facility is at risk of abuse or neglect, if the findings of an investigation suggest that an adult in the alternate care facility died allegedly as a result of abuse or neglect.

(9) Unless the legal representative is alleged to have abused, neglected, or exploited the adult, a legal representative may act on behalf of an adult for purposes of this administrative regulation.

Section 4. Results of the Investigation. (1) Designated regional cabinet staff shall address the following when evaluating the results of the investigation:

- (a) The adult's account of the situation, if possible;
- (b) The alleged perpetrator's account of the situation, if available;
- (c) The information supplied by collateral contact;
- (d) Records and documents;
- (e) The assessment information;
- (f) Previous reports involving the adult or alleged perpetrator; and
- (g) Other information relevant to the protection of an adult.

(2) The findings of the adult protective service investigation shall be:

- (a) Shared with appropriate authorized agencies in accordance with KRS 209.030(5); and
- (b) Documented on the cabinet's database.

(3) Designated regional cabinet staff shall maintain a written record, as specified in KRS 209.030(5), to include:

- (a) The DPP-115; and
- (b) A narrative documenting:
 - 1. The investigation; and
 - 2. Findings of the investigation.

(4) If an issue or concern identified by the cabinet does not require a protective service case being opened, the cabinet may work with the adult to develop an aftercare plan:

- (a) At the consent of the adult; and
- (b) In an effort to prevent a recurrence of adult abuse, neglect, or exploitation.

Section 5. Substantiation Criteria and Submission of Findings. (1) In determining if an allegation is substantiated, the cabinet shall use the statutory definitions of:

- (a) Adult; and
- (b) 1. Abuse;
- 2. Neglect; or
- 3. Exploitation.

(2) If preponderance of evidence exists, designated regional cabinet staff may make a finding of and substantiate abuse, neglect, or exploitation.

(3) A finding made by cabinet staff shall not be a judicial finding.

(4) Cabinet supervisory staff shall review and approve a finding of an investigation prior to its finalization.

Section 6. Opening a Case. (1) A case may be opened:

- (a) As a result of a protective service investigation; or
 - (b) Upon identification of an adult through a general adult services assessment as being at risk of abuse, neglect, or exploitation.
- (2) The decision to open a case shall be based on the:
- (a) Voluntary request for, or acceptance of, services by an adult who needs adult protection or general adult services; or
 - (b) Need for involuntary emergency protective services.
- (3) If it has been determined that an adult is incapable of giving consent to receive protective services, the court may assume jurisdiction and issue an ex parte order in accordance with KRS 209.130.
- (4) Emergency protective services shall be provided in accordance with KRS 209.110.
- (5) The cabinet shall develop an adult's case plan with the adult and, upon consent of the adult, may include consideration of the following:
- (a) Designated regional cabinet staff;
 - (b) Family members;
 - (c) Family friends;
 - (d) Community partners; or
 - (e) Other individuals requested by the adult.
- (6) Within thirty (30) calendar days of opening a case, designated regional cabinet staff shall:
- (a) Initiate a case plan with the adult; and
 - (b) Submit the plan to supervisory staff for approval.

Section 7. Referrals for Criminal Prosecution. The cabinet shall refer substantiated reports of adult abuse, neglect, or exploitation to Commonwealth attorneys and county attorneys for consideration of criminal prosecution in accordance with KRS 209.180.

Section 8. Restraining Order or Injunctive Relief. If necessary, designated regional cabinet staff shall contact the cabinet's Office of Legal Services for advice and assistance in obtaining restraining orders or other forms of injunctive relief that may be issued for protection of an adult, in accordance with KRS 209.040.

Section 9. Guardianship or Conservatorship of Disabled Persons. (1) In an attempt to provide appropriate protective services, designated regional cabinet staff shall assess the need for guardianship if an individual appears unable to make an informed choice to:

- (a) Manage personal affairs;
 - (b) Manage financial affairs; or
 - (c) Carry out the activities of daily living.
- (2) Designated regional cabinet staff may assist in protective service situations in seeking out family, friends, or other interested and qualified individuals who are willing and capable to become guardians.
- (3) Upon an order of the court, the cabinet shall file an interdisciplinary evaluation report in accordance with KRS 387.540(1).

Section 10. Involuntary Hospitalization. (1) Designated regional cabinet staff shall encourage the voluntary hospitalization of an adult who needs to secure mental health treatment to avoid serious physical injury or death.

- (2) Designated regional cabinet staff may file a petition for involuntary hospitalization in accordance with KRS 202A.051 and 202B.100 if:
- (a) The adult lacks the capacity to consent or refuses mental health treatment;
 - (b) Other resources are not available;
 - (c) Another petitioner is absent or unavailable; and
 - (d) Prior cabinet supervisory approval is obtained.

Section 11. Reporting. (1) Reports of adult abuse, neglect, or exploitation shall be maintained in the cabinet's database for:

- (a) Use in future investigations; and
- (b) Annual reporting requirements as specified in KRS 209.030(12).

(2) The cabinet shall submit a report annually to the Governor and Legislative Research Commission in accordance with KRS 209.030(12)(b).

(a) In addition to the information required by KRS 209.030(12)(b), the summary of reports received by the cabinet shall include for each individual who is the subject of a report:

1. Age;
2. Demographics;
3. Type of abuse;
4. The number of:
 - a. Accepted reports; and
 - b. Substantiated reports; and
5. Other information relevant to the protection of an adult.

(b) The information required in paragraph (a) of this subsection shall only be provided if it does not identify an individual.

Section 12. Case Closure and Aftercare Planning. (1) The cabinet's decision to close an adult protective service case shall be based upon:

(a) Evidence that the factors resulting in adult abuse, neglect, or exploitation are resolved to the extent that the adult's needs have been met;

(b) The request of the adult; or

(c) A lack of legal authority to obtain court ordered cooperation from the adult.

(2) An adult shall be:

(a) Notified in writing of the decision to close the protective service case; and

(b) Advised of the right to request a service appeal in accordance with Section 13 of this administrative regulation.

(3) If an adult protective service case is appropriate for closure, the cabinet may work with the adult to develop an aftercare plan:

(a) At the consent of the adult; and

(b) In an effort to prevent a recurrence of adult abuse, neglect, or exploitation.

(4) If the cabinet closes the protective service case in accordance with this section, aftercare planning may link the adult to community resources for the purpose of continuing preventive measures.

Section 13. Appeal Rights. A victim of adult abuse, neglect, or exploitation may request a service appeal in accordance with 922 KAR 1:320, Section 2.

Section 14. Incorporation by Reference. (1) "DPP-115, Confidential Suspected Abuse/Neglect, Dependency, or Exploitation Reporting Form", edition 9/05, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Community-Based Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m. (17 Ky.R. 3618; eff. 8-21-91; Am. 21 Ky.R. 667; eff. 9-21-94; Recodified from 905 KAR 5:070, 10-30-98; Am. 25 Ky.R. 2473; 26 Ky.R. 81; 403; eff. 8-16-99; 32 Ky.R. 1002; 1450; 1677; eff. 3-9-2006.)

Appendix E Resources

National Center on Elder Abuse (NCEA)

The National Center on Elder Abuse (NCEA) serves as a national resource center dedicated to the prevention of elder mistreatment. First established by the U.S. Administration on Aging (AoA) in 1988 as a national elder abuse resource center, the NCEA was granted a permanent home at AoA in the 1992 amendments made to Title II of the Older Americans Act. To carry out its mission, the NCEA disseminates elder abuse information to professionals and the public, and provides technical assistance and training to states and to community-based organizations. The NCEA makes news and resources available on-line and an easy-to-use format; collaborates on research; provides training; identifies and provides information about promising practices and interventions; operates a listserv forum for professionals; and provides subject matter expertise on program and policy development.

Since its inception, the NCEA has operated as a unique, multi-disciplinary consortium of equal partners with expertise in elder abuse, neglect, and exploitation. Over the years, the NCEA collaborators have addressed the provisions outlined in the OAA through various activities and worked towards assisting the nation better address and respond to elder abuse, neglect, and exploitation. Not only have the NCEA's collaborators come from various professional fields, the NCEA has proved a valuable resource to many professionals working in some way with older victims of elder mistreatment, including: adult protective services; national, state, and local aging networks; law enforcement; health care professionals; domestic violence networks; and others.

Now and into the future, the NCEA will continue to tailor its activities to meet the special needs of disadvantaged populations, including limited-English speakers and other underrepresented groups such as Native Americans. It will incorporate the latest technology to generate and disseminate knowledge that can build and strengthen elder rights networks and enhance the effectiveness of state and community-based elder abuse prevention and intervention programs. Furthermore, the NCEA will serve as a national clearinghouse of information for elder rights advocates, law enforcement, legal professionals, public policy leaders, researchers, and others working to ensure that all older Americans will live with dignity, integrity, independence, and without abuse, neglect, and exploitation.

**297 Graham Hall
Newark, DE 19716**

Telephone: 302-8313525

www.ncea.aoa.gov

National Adult Protective Services Association (NAPSA)

The National Adult Protective Services Association (NAPSA) is a national non-profit 501 (c) (6) organization with members in all fifty states, including the District of Columbia, the U.S. Virgin Islands, and Guam. It was formed in 1989 to provide state Adult Protective Services (APS) program administrators and staff with a forum for sharing information, solving problems, and improving the quality of services for victims of elder and vulnerable adult abuse. The organization is governed by a Board of Directors that includes the President, Past-President, President-Elect, Secretary, and Treasurer, as well as Regional Representatives and Committee Chairmen. There are nine national regions: Northeast I and II, Southeast I and II, Central, Mountain, Southwest, and West Coast I and II.

NAPSA is a partner in the National Center on Elder Abuse (NCEA) funded by the U. S. Administration on Aging, and a founding member of the Elder Justice Coalition. As part of an ongoing effort to increase collaboration with other national and state organizations, NAPSA has also participated in grant project activities with the American Bar Association Commission on Law and Aging, the Wisconsin Coalition Against Domestic Violence, the National Organization of Victims Advocates, the California District Attorneys Association and the International Association of Forensic Nurses.

NAPSA conducts annual national training events, research and innovation in the field of Adult Protective Services. The organization publishes a twice-yearly newsletter written for and by APS members that highlights innovative practices and APS activities throughout the nation. NAPSA is actively involved in conducting ongoing national research activities on topics such as APS training activities, services to self-neglecting adults and national APS data collection. Members regularly share publications, ideas, and copies of state statutes and materials for new projects with one another.

The mission of NAPSA is to improve the quality and availability of protective services for disabled adults and elderly persons who are abused, neglected, or exploited and are unable to protect their own interests.

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National Committee for the Prevention of Elder Abuse (NCPEA)

The National Committee for the Prevention of Elder Abuse (NCPEA) is an association of researchers, practitioners, educators, and advocates dedicated to protecting the safety, security, and dignity of America's most vulnerable citizens. It was established in 1988 to achieve a clearer understanding of abuse and provide direction and leadership to prevent it. The Committee is one of six partners that make up the National Center on Elder Abuse, which is funded by Congress to serve as the nation's clearinghouse on information and materials on abuse and neglect.

The mission of NCPEA is to prevent abuse, neglect, and exploitation of older persons and adults with disabilities through research, advocacy, public and professional awareness, interdisciplinary exchange, and coalition building.

Specifically, NCPEA:

- Conducts research to reveal the causes of abuse and effective means for preventing it
- Contributes to the scientific knowledge base on elder abuse by identifying critical information needs and providing vehicles for the exchange of new research findings
- Promotes collaboration and the exchange of knowledge between diverse disciplines
- Provides professionals with information and training to help them effectively intervene in cases
- Promotes the growth of community coalitions to ensure comprehensive and well coordinated service delivery
- Raises community awareness about the problem and solutions
- Advocates for needed services and enlightened public policy

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National Association of State Units on Aging (NASUA)

Founded in 1964, the National Association of State Units on Aging (NASUA) is a non-profit association representing the nation's 56 officially designated state and territorial agencies on aging. The mission of the Association is to advance social, health, and economic policies responsive to the needs of a diverse aging population and to enhance the capacity of its membership to promote the rights, dignity and independence of, and expand opportunities and resources for, current and future generations of older persons, adults with disabilities and their families.

NASUA is the articulating force at the national level through which the state agencies on aging join together to promote social policy in the public and private sectors responsive to the challenges and opportunities of an aging America.

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National Center for Victims of Crime

The National Center for Victims of Crime is the nation's leading resource and advocacy organization for crime victims and those who serve them. Since its inception in 1985, the National Center has worked with grassroots organizations and criminal justice agencies throughout the United States serving millions of crime victims.

The mission of the National Center for Victims of Crime is to forge a national commitment to help victims of crime rebuild their lives. We are dedicated to serving individuals, families, and communities harmed by crime.

Working with local, state, and federal partners, the National Center for Victims of Crime:

- Provides direct services and resources to victims of crime across the country;
- Advocates for laws and public policies that secure rights, resources, and protections for crime victims;
- Delivers training and technical assistance to victim service organizations, counselors, attorneys, criminal justice agencies, and allied professionals serving victims of crime; and
- Fosters cutting-edge thinking about the impact of crime and the ways in which each of us can help victims of crime rebuild their lives.

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