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Dedication

This report remains respectfully dedicated to all of the senior and vulnerable adult citizens of Kentucky; as well as all of the victims of Elder Abuse, past, present, and unfortunately those yet to come to the attention of us all.

Elder Abuse Committee **Membership**

Nancy Addington
Lincoln Trail Area Agency on Aging
nancy@ltadd.org

Cathy Allgood Murphy
AARP
cmurphy@aarp.org

Deborah Anderson
Dept. for Aging and Independent Living
Deborah.anderson@ky.gov

Ed Barnes
CHFS/OIG
Ed.barnes@ky.gov

Kimberly Baker
CHFS/Protection and Permanency
Kimberly.baker@ky.gov

Bonnie Buchanan
Louisville Metro Human Services
Bonnie.buchanan@loumetro.org

Michael Cheek
CHFS/Protection and Permanency
Michael.cheek@ky.gov

Tanya Clark
Kentucky State Police
Tanya.clark@ky.gov

Tom Emberton, Jr.
DCBS Deputy Secretary
Tom.emberton@ky.gov

Honorable Tim Feely
Oldham County Judge
timfeely@mail.aoc.state.ky.us

Gene Foster, past Chairperson
CHFS
gfooster@maryhurst.org

Julie M. Franklin
CHFS/FSADB
Juliem.franklin@ky.gov

Kathleen Gannoe
Bluegrass Long term Care
Ombuddy1@aol.com

Dan Gibbons
Office of Attorney General
Dan.gibbons@ag.ky.gov

Shari Gibson
CHFS/OIT
Shari.gibson@ky.gov

Jim Grace
CHFS/Protection and Permanency
James.grace@ky.gov

Nikki Henderson
Office of Attorney General
nikki.henderson@ag.ky.gov

Sharon Hilborn
CHFS/CADV
Sharonk.hilborn@ky.gov

John Kaplan
CHFS/Training Branch
John.kaplan@ky.gov

Deborah Rattle
Seven Counties Services
drattle@sevencounties.org

Ken Schwendeman
Justice Cabinet
Ken.schwendeman@ky.gov

Jackie Strader
CHFS Long Term Care Ombudsman
Jacquel.Strader@ky.gov

Pam Teaster, PhD
University of Kentucky
pteaster@uky.edu

Sue Thomas-Cox
CHFS/Dept. of Public Health
Sue.thomas-cox@ky.gov

Cindy Venable
Louisville Metro Human Services
Cindy.venable@loumetro.org

Mark Washington, Present Chairperson
DCBS Commissioner
mark.washington@ky.gov

Sarah Wilding
CHFS/Dept. for Public Health
Sarah.wilding@ky.gov

Wilson Wong
Researcher and Elder Abuse Expert
WilsonWong@insightbb.com

Murray Wood
LRC
Murray.wood@lrc.ky.gov

Steven Fisher
DCBS/Adult Safety Branch
Steven.Fisher@ky.gov

National Overview

“While The U.S. Congress has created laws addressing child abuse and crimes against women, not a single piece of legislation dealing directly with abuse of elderly persons has ever passed.”

(Elder Justice Act Sees Congress Again; Robert Langley)

The time to stop the silence in regards to Elder Abuse is now. It is incumbent upon us all, as a society and as compassionate citizens, to ask ourselves why nothing has been done, and how we can begin to effectively address this problem in the National arena. Elder Abuse has long been touted as “The Silent Crime”, when in fact it is anything but. Statistical research and data show us that MILLIONS of elderly citizens in our great nation are the victims of abuse, neglect, and exploitation each year. Is it possible that our own fears come into play on this issue? The truth is that it is difficult and uncomfortable to consider ourselves as becoming frail or vulnerable. The uncertainty of the future and the loss of our own independence and youth can create feelings of anxiety, fear, and it is easy to push those thoughts and those realities aside and continue on the current path of avoidance and denial. Fear is a powerful emotion. However we must be cognizant enough to recognize that avoidance of a problem has never effectively solved a problem. Avoidance of Elder Abuse issues can no longer be an option.

“This country learned that prejudice against women (sexism) and against race (racism) was costly to society. Productivity suffered. Cultural sensibility was offended. Likewise, the impact of ageism is considerable, for older people can and do play a major role in social and economic development.” *(Ageism in America)*. We must recognize “that age discrimination exists both advertently and inadvertently in personal and institutional form, and that economic and psychological factors play a major role in ageism as well...” *(The National Center on Elder Abuse, National Elder Abuse Incidence Study, Washington: NCEA at American Public Health Services Association, 1998)*.

Special areas of concern that need our attention, and our resolution are Elder Abuse, Health Care, Nursing Home Standards, Emergency Services/Disaster Preparedness, Workplace Discrimination, Media Discrimination and Marketing Discrimination. “Only twenty-one states report that they maintain an elder abuse registry.” *(P.B. Teaster and The National Center on Elder Abuse, A Response to the Abuse of Vulnerable Adults: 2000 Survey of States Adult Protective Services, Washington: The National Center on Elder Abuse, 2002)*. In 2005, the U.S. Congress completely eliminated funding for geriatric education and training in the 2006 Labor-Health and Human appropriations bill. The program had been funded at \$31.5 million in 2005.” *(Ageism in America)*

“Older women in particular, experience the impact of ageism. Living longer and alone making up some 80 percent of the residents of nursing homes, they are more vulnerable than men to abuse and poverty. But there are other ramifications. Through a series of experiments, psychologist Becca Levy demonstrated the adverse physiological effects of

ageism, showing that older individuals who are presented with negative stereotypes of aging over time, experience detrimental changes, such as a decline in memory performance and a heightened cardiovascular response to stress.” (*Ageism in America*)

“Of the total \$1 billion National Institute on Aging budget, only \$1.7 million goes to NIA Elder Abuse and Neglect Research Funding” (*U.S. Department of Health and Human Services, Budget in Brief, FY 2006*). Yet we know through various studies that 1 – 3 million Americans over the age of 65 are abused and neglected each year by the very people whom they trust and depend on for their care. When we factor in financial exploitation the number increases to 5 million each year, and only about 4 percent of the cases are brought to the attention of authorities.

When it comes to health care “60 percent of adults over 65 do not receive preventive services, and 40% do not receive vaccines for flu and pneumonia. They receive even less preventive care for high blood pressure and cholesterol.” (*National Center for Chronic Disease Prevention and Health Promotion (CDC), The State of Aging and Health in America 2004, Washington: U.S. Department of Health and Human Services , 2004*). “Chemotherapy is underused in the treatment of breast cancer patients over 65, even though for many of these patients it may improve survival.” (*X.L. Du, C.R. Key, C. Osborne, et al., “Discrepancy between consensus recommendations and actual community use of adjuvant chemotherapy in women with breast cancer”, Annals of Internal Medicine 138 (2003), 90-7*) “Older patients are significantly underrepresented in clinical treatment trials for all types of cancer, and most notably in trials for treatment of breast cancer.” (*L.F. Hutchins, J.M. Unger, J.J. Crowley, et al, Under-representation of patients 65 years of age or older in cancer-treatment trials, New England journal of Medicine 341, 27 (1999), 2061-7*) “Only 10 percent of people age 65 and older receive appropriate screening for bone density, colorectal, prostate cancer, and glaucoma. This despite the fact that the average age of colorectal cancer patients is 70, more than 70 percent of prostate cancer is diagnosed in men over 65, and people over 60 are six times more likely to suffer from glaucoma.” (*National Center for Chronic Disease Prevention and Health Promotion (CDC), The State of Aging and Healthy Aging for Older Adults, Washington: U.S. Department of Health and Human Services, 2003*). The fear of losing independence, and the fear of being placed into a nursing home or other long term care facility can be so overwhelming that they elder may refuse or avoid seeking medical attention for conditions they suffer with.

We have much work to do in the area of our nursing homes and other long term care facilities, as it relates to quality of care and staffing patterns. Research shows that “nine out of ten nursing homes are inadequately staffed.” (*Centers for Medicare and Medicaid Services*) and “54 percent of nursing homes fail to meet minimum standards, yet only 0.5 percent of nursing nationwide are cited and penalized for patterns of widespread problems that cause harm to residents.” (*United States General Accounting Office, Nursing Home Quality: Prevalence of Serious Problems Reinforces Enhanced Oversight, GAO-03-561 Washington General Accounting Office, 2003*) “We need to increase current spending to 7.6 billion a year, and 8 percent increase, in order to reach adequate staffing levels.” (*Centers for Medicare and Medicaid Services*)

Our nation's elder's also suffer discrimination when it comes to our emergency service and disaster preparedness. "60 percent of victims identified from Hurricane Katrina were age 61 or older." (*Louisiana Department of Health and Hospitals, Vital Statistics of All Bodies at St. Gabriel Morgue, 11/18/2005, Baton Rouge; Louisiana, Department of Health and Hospitals, 2005*) "Within 24 hours following the 9/11 terrorist attacks, animal advocates were on the scene rescuing pets, yet older and disabled people were abandoned in their apartments for up to seven days before ad hoc medical teams arrived to rescue them." (*N.O'Brien, Emergency Preparedness for Older People, New York: International Longevity Center-USA, 2003*). "The socially isolated, homebound, mentally or physically ill are also at higher risk of weather-related hyperthermia." (*Ageism in America*). "Heat wave –related hyperthermia kills about 400 people every year in the U.S., about 80 percent are over the age of 50." (*National Institute on Aging, Age Page: Hyperthermia: Too Hot for Your Health, Washington: National Institute on Aging/U.S. Department of Health and Human Services/National Institutes of Health, 2001*).

These consistent truths of ageism are also prevalent in our workplaces. "The Economic Policy Institute reports that during economic downturns, a disproportionately large percentage of long –term unemployed workers (25.6 percent) are over the age of 45 because they must overcome age discrimination in the labor market." (*A. Stettner and J. Wenger. The Broad Reach of Long-term Unemployment, EPI Issue #194, Washington: The Economic Policy Institute, 2003*). In order "to improve job prospects, 63 percent of applicants say they would leave dates off their resume' to hide their age, and 18 percent say they would undergo cosmetic surgery." (*D. Haralson and S. Parker, 'Age and job searching', USA Today, January 21, 2003*). "The amount of under-funding in corporate pension plans currently totals \$450 billion, and the amount of under-funding in government pension plans is \$300 billion" (*Pension Benefit Guarantee Corporation (PBGC), Performance and Accountability Report, Fiscal Year 2005, Alexandria, VA: Pension benefit Guarantee Corporation, 2005*). When it comes to older persons in the workforce, they find themselves in a "no win" situation, "...they are perceived as a burden if they don't work, but if they do work, they are viewed as preventing younger workers from getting jobs" (*Ageism in America*).

Age discrimination also crosses into our media and helps to perpetuate the negative stereotyping and overall lack of appreciation for our elders. We know that "less than 2 percent of prime-time TV characters are age 65 or older, although this group comprises 12.7 percent of the population." (*M.M. Donlon, O. Ashman, and B.R. Levy, 'Revision of older television characters: a stereotype-awareness intervention', Journal of Social Issues 61, 2 (2005), 397*) "According to one study, approximately 70 percent of older women seen on TV are portrayed disrespectfully, treated with little if any courtesy, and often looked at as "bad" (*G. Gerbner, L. Gross, N. Signorielli, and M. Morgan, 'Aging in with television; images in television drama and conceptions of social reality', Journal of Communication 30 (1980), 37-47*). "Although Americans who are 40 and over comprise 42 percent of the American population, more than twice as many roles are cast with actors who are under the age of 40 as compared to actors who are 40 or older" (*Screen Actors Guild, SAG, Television Casting Data*).

When it comes to marketing- the age of “old” is surprisingly young. “In the appearance category of the anti-aging industry, target groups start at individuals 35 years old.” (*Business Communications Company, Inc.*). “The ‘anti-aging’ industry perpetuates a culture that views aging and the aging process as negative and undesirable. The U.S. market for anti-aging products and services in 2004 grew to \$45.5 billion. Growing at an annual rate of 9.5 percent, this market will reach nearly \$72 billion by 2009” (*Business Communications Company, Inc. Anti-aging Products and Services, Norwalk, CT: Business Communications Company, Inc., 2005*). Ironically, the very marketing/advertising techniques directed at older persons “is not sensitive to older person’s vision and hearing limitations (small fonts, many colors, little color contrast; on the phone speaking to quickly).” (*MetLife’s Mature Market Institute, The Mature market: Guidelines for Effective Communication, New York: Metropolitan Life Insurance Company, 1999*).

A large proportion of our fellow citizens, age 65 and older, are either in a long term care facility, or are isolated and homebound. This lends itself to society allowing them to become the invisible and the forgotten. Yes, our “fear of deterioration, dementia, and dependency is powerful” (*Ageism in America*). Younger populations, perhaps our children, our grandchildren or even ourselves are guilty of patronizing language, changes in tone, or pace when speaking to older persons, even when the older person shows no cognitive impairments. The result of such interactions on the elder is “...reduced sense of self, lower self –esteem, and perceptions of low self-competence, which enforces existing stereotypes” (*E.B. Ryan, J.M. Hamilton and S.K. See, ‘Patronizing the old: how do younger and older adults respond to baby talk in the nursing home? International Journal of Aging and Human Development’ 39, (1994), 21-32*). It becomes an interesting reflection in the dichotomy we have created- we all strive to live long lives, and have work diligently to create wellness programs to increase quality and longevity of life, yet when that is achieved we perceive elders as a physiological failure, as undesirable, as something to be avoided at all costs.

“Although the U.S. has comprehensive federal laws on child abuse and domestic violence, there are none in place to address elder abuse. Likewise, while federal offices exist to address child abuse and domestic violence, currently not one federal employee is assigned to work full-time on the issues of elder abuse” (*Ibid*). “As with all struggles for human rights, part of the fight for the fair treatment of elder persons entails bringing the prejudices to light and making the public aware that they do not represent reality. However, this is just the first step. Policies to treat all older citizens with respect, including those in institutional setting, must be set in place and enforced.” (*Ageism in America*) “Documenting the extent of prejudice toward older persons can lay the groundwork for a change in social attitudes and expectations, and contribute to legislation and enforcement to achieve a cultural and personal transformation” (*Ageism in America*).

Yes, Ageism hurts us all. It is time we took a real look at our aging population and a real look at ourselves in the process, each of us, after all, are the face of aging . It is time to speak up and to have honest conversation. It is time that we move forward as a country,

and do the right thing for ALL of our citizens. The injustice must not continue. As Martin Luther King Jr so eloquently stated, “Injustice anywhere is a threat to justice everywhere.”

This report covers fiscal year '07 (July 1, 2006 – June 30, 2007) and is a joint effort between the Cabinet for Health and Family Services (CHFS) and the Elder Abuse Committee, established under HB 298 in 2005.

The final draft of this report, after being reviewed and approved by the Elder Abuse Committee, and Cabinet leadership, will be forwarded to Governor Beshear and the Legislative Research Commission as required by statute. Copies of this report are also available to the professional community and the general public on the Elder Abuse Awareness Website at <http://chfs.ky.gov/dcbs/dpp/ea/>.

Timetable of Efforts to Combat Ageism in America

1964

Civil Rights Act becomes law. Provisions include Title VII, which bans workplace discrimination

based on race, color, sex, religion, and national origin, but not age. Instead, Congress directs the U.S. Labor Department to study whether separate age bias laws are needed.

The Act instructs Secretary of Labor W. Willard Wirtz to conduct a study and provide recommendations on “legislation to prevent arbitrary discrimination in employment because of age.”

1965

The Wirtz report recommends legislation to eradicate discrimination based on stereotypes, especially in the form of arbitrary age ceilings. The resultant legislation is the Age Discrimination Act.

On July 14, 1965, President Lyndon B. Johnson signs into law the Older Americans Act.

1967

Labor Department confirms the pervasiveness of age discrimination in the workplace. Congress passes the Age Discrimination in Employment Act (ADEA). Modeled on Title VII, the ADEA, to be enforced by the Labor Department, protects workers 40 – 65.

1974

U.S. Supreme Court finds the aforementioned provision unconstitutional with regard to state employees, noting that it is in infringement on state’s rights. Many states have their own age discrimination statutes for their employees.

1978

Congress extends ADEA protection through age 70, eliminating mandatory retirement before the age of 70. Rep. Claude Pepper is a key figure in this effort, which represents a compromise with those who want to eliminate mandatory retirement entirely.

President Carter transfers ADEA enforcement to the Equal Employment Opportunity Commission (EEOC).

1979

First Congressional Hearing on Elder Abuse.

“[T]his is the first time that any Committee has held hearings dealing ...with the abuse of the elderly.” ---- *Robert F. Drinan, Chairman, House Select Committee on Aging*

1981

Report by the House Select Committee in Aging: *Elder Abuse: An Examination of a Hidden Problem.*

“Our committee report should be considered a blueprint for developing a national program to eliminate this national disgrace known as elder abuse.”

-----*Mario Biaggi, chairman, Subcommittee on Aging*

“I predict...the ‘80’s will be the decade of the battered parent.”

----*Claude Pepper, chairman, House Select Committee on Aging*

1982

First World Assembly on Aging is held at the Hapsburg Palace in Vienna, Austria.

1985

Report by the House Select Committee on Aging: *Elder Abuse: A National Disgrace.*

“[E]lder abuse has not diminished. In fact, its incidence is increasing...yet action to effectively address this problem remains elusive.”

---*Claude Pepper, chairman, SubCommittee on Health and Long-Term Care*

1986

The ADEA amendments are passed, sponsored by Rep. Claude Pepper. The bill eliminates the upper age limit of 70, thereby extending ADEA coverage to all individuals over the age of 40 and eliminating mandatory retirement for most all workers. This, says Laurie McCann, an AARP attorney, allows “the law to serve it’s true purpose of protecting any older person against workplace bias.”

1990

Older Workers Benefit Protection Act becomes law. It amends the ADEA and bans employers from denying benefits to older employees because of age, unless cost of providing the benefits can be shown to increase with age. It also sets forth a process by which an employee can voluntarily waive his/her rights under ADEA upon termination, the interpretation of which has become a source of lawsuits. Law is a response to a Supreme Court decision upholding a company’s right to deny or trim benefits to older employees.

Report by the House Select Committee on Aging: *Elder Abuse: A Decade of Shame and Inaction*.

“A decade has passed since the Committee held its first hearing on elder abuse...[T]his report concludes abuse is increasing...States and Congress should act immediately to assist the states preventing, identifying, and assisting our nation’s elder abuse victims.”

---Edward Roybal, Chairman, House Select Committee on

Aging

1991

Civil Rights Act of 1991 amends the nation’s major civil rights laws, including ADEA, effectively overturning several Supreme Court decisions that made victory difficult for age bias plaintiffs.

A report by the House Select Committee on Aging: *Elder Abuse: What Can Be Done?*

A report by the House Select Committee on Aging: *Protecting America’s Abused Elderly: the Need for Congressional Action*.

Senate Special Committee on Aging: *Elder Abuse and Neglect: Prevention and Intervention, Protecting America’s Abused Elderly: The Need for Congressional Action, and Crimes Committed Against the Elderly*.

1992

The Older Americans Act is amended to include a Title VII, Chapter 3-Programs for Prevention of Elder Abuse, Neglect, and Exploitation (93.041).

1995

Senate Special Committee on Aging: Society’s Secret Shame: Elder Abuse and Family Violence.

1996

In one its few favorable age- bias decisions, the U.S. Supreme Court rules in *O’Connor v Consolidated Coin Caterers Corp.* that a worker who has been fired is not required to demonstrate to ADEA that he or she was replaced by someone under 40 to prove age discrimination.

The State Justice Institute funds the Commission and the National Association of Women Judges (NAWJ) to develop three model interdisciplinary curricula on elder abuse for judges and for key court staff. The curricula were published as *Elder Abuse in the State Courts: Three Curricula for Judges and Court Staff* (ABA 1997)

1998

Senate Special Committee on Aging: *Equity predators: Stripping, Flipping and packing Their Way to Profits; Betrayal: The Quality of Care in California Nursing Homes; and Crooks Caring for Seniors; The Case for Criminal Background Checks.*

1999

Senate Special Committee on Aging: *Residents at Risk: Weakness Persists in Nursing Home Complaint Investigation and Enforcement.*

2000

In *Kimel v State of Florida Board of Regents*, high court rules that state government agencies are protected by the Constitution from being sued for money damages under the ADEA. Says McCann, “The decision leaves state employees as second-class citizens.”

2001

Largest class-action suit ever to charge age bias, filed on behalf of 6,400 Allstate insurance agents. They claim Allstate ended their employment contracts to strip them of pensions and other benefits and as a way of weeding out older agents. The still pending lawsuit could have a ripple effect throughout corporate America.

Senate Special Committee on Aging; *Saving Our Seniors: preventing Elder Abuse, Neglect, and Exploitation and Swindlers, Husksters, and Snake Oil Salesman: The Hype and Hope of Marketing Anti-Aging Drugs to Seniors.*

2002

Without making a ruling, the Supreme Court tosses out *Adams v Florida Power Corporation*, a key test of age-bias victims’ right to challenge employer practices and policies that hit older workers hardest (aka “disparate impact”). Without federal appeals courts divided on whether this theory applies to age discrimination victims, the high court’s move leaves the question unresolved.

Age discrimination complaints filed with the EEOC hit a record 19,921. The slumping economy and the graying of the American workforce are prime factors.

Senate Special Committee on Aging: *Safeguarding Our Seniors: Protecting the Elderly from Physical and Sexual Abuse in Nursing Homes, and Schemers, and Sweetheart Deals; Financial Predators and the Elderly*

Second World Assembly on Aging in Madrid, Spain.

Introduction on Elder Justice Act to U.S. Congress; this piece of legislation would ; Elevate elder justice issues to a national attention, Improve the quality, quantity and

accessibility of information, Increase knowledge and support promising projects, Develop forensic capacity, Provide victim assistance and support for at-risk elders, Increase prosecutions, Increase trainings available, Create special programs to support underserved populations including rural, minority and Indian seniors, Increase security, collaboration and consumer information in Long-Term care, and provide for Evaluations and accountability and assure funds are properly spent.

*Information from the National Long Term Care Ombudsman Resource Center,
http://www.ltombudsman.org/ombpublic/49_369_3825.cfm*

2003

EEOC wins the biggest age discrimination settlement in U.S. history, recovering \$250 million in back pay for 1,700 public safety officers in California in EEOC and *Arnett et al. v. CalPers*. As important as the financial win is to the plaintiffs, the case also focuses attention on the growing problem of age discrimination in the workplace and gives a boost to the EEOC.

Federal district court rules in favor of employees' IBM pension lawsuit. Final settlement in 2005 is only \$20 million from the original \$300 million ruling.

First "Anti-Aging World Conference" is held in Paris.

2005

Addressing the issue of disparate impact, the U.S. Supreme Court rules that plaintiffs in age discrimination cases need not to prove that the discrimination was intentional (March).

Federal district court blocks a Bush administration rule that would have allowed employers to reduce or eliminate health benefits for retirees when they reach age 65.

In July, the California State Assembly voted 54-10 to pass legislation by Democratic Assembly woman Lois Wolk and Sen. Joe Simititian to require banks and credit unions to report financial elder abuse.

The Hebrew Home for the Aged at Riverdale, N.Y., opens the nation's first elder abuse shelter on May 25.

(The Anti-Ageism taskforce at The Intergenerational Longevity Center, 'Ageism in America')

Executive Summary

The Cabinet for Health and Family Services received 45,048 reports of Adult Abuse during the state fiscal year (SFY) 2007. This number represents a decrease of 2.5% over SFY '06. The total number of reports for adults over the age of sixty (60), was 9,660. This number represents a 2.9% increase over SFY '06.

Cases that resulted in criminal charges under KRS 209 rose from 320 in SFY '06 to 366 in SFY '07. This is a statistical increase of 14.4%. There are several factors that contribute to the increase of criminal charges being filed. The Office of Attorney General created and distributed the "prosecutor's Manual on Elder Abuse" during SFY '06. Local law enforcement, as well as, Kentucky State Police (KSP) has strengthened their partnerships with The Department for Community Based Services by participating in the Local Coordinating Councils across the state, and by attending specialized training on Elder Abuse through the Department of Criminal Justice Training (DOCJT). During SFY' 06 DOCJT staff trained approximately 115 law enforcement officers on Elder Abuse. The strengthened relationship and increased training has allowed officers to be more aware of statutes in place to protect our elders and other vulnerable adults, the trainings have educated officers on available resources in their communities, and has allowed for the promotion of multi disciplinary investigations.

We have seen many successes during SFY '07, all which aide in the protection of our elders and other vulnerable adults in the Commonwealth of Kentucky.

The Local Coordinating Councils on Elder Abuse (LCCEA) continue to grow and to provide critical local infrastructure that allows for the creation and implementation of specialized community resources which are specific to the needs of individual areas. During the past fiscal year we have seen three new councils evolve, bringing the total number of counties covered by an LCCEA to 115 out of the 120 counties in the Commonwealth. The Local Coordinating Councils on Elder Abuse also play an instrumental role in promoting Elder Abuse Awareness in their individual communities and often bring cases to the attention of law enforcement as well as other appropriate authorities in their communities through their case review teams and general meetings. With the heightened awareness comes an increase in effective community network responses. They are tireless advocates for our elders and other vulnerable adults. Kentucky can be very proud that we have become national leaders in the area of organized and widespread grassroots efforts to address the social issue of Elder Abuse. We are the only state in the country to have such councils. Some of the materials created by the Local Coordinating Councils on Elder Abuse have caught national attention and have been highlighted in national news releases. Kentucky has received inquiries from nine states, thus far, as to how they can create and implement similar councils, as well as how the LCCEA's have gained community buy in to utilize preventative resources that Kentucky has developed, such as the Kentucky Fraud Fighters Form. Although the vast majority of the Local Coordinating Councils in Kentucky are active and thriving, there are still several who do not have regular DCBS participation, nor the participation of

local community leaders. This should be given particular attention in SFY '08, and the Cabinet should send the message that regional DCBS staff participation is an expectation.

It is a goal that in the coming year the LCCEA's will give special attention to intergenerational programs within their communities. "These programs build community by integrating the old and the young, transmitting knowledge and experience to future generations and re-enforcing the value of people at all ages. Studies have found that young people in such programs show measurable improvements in school attendance, attitudes toward school and the future, and attitudes toward elders. Adult volunteers report substantial benefits to themselves: the satisfaction of sharing their experience, feeling useful, and giving back to the community." (*Harvard School of Public Health-Metlife Foundation Initiative on Retirement and Civic Engagement*)

One year ago the Department for Aging and Independent Living (DAIL) was established. Since that time DAIL has been involved in many initiatives that serve to improve service delivery, access to resources and improve quality of life. Some of the initiatives include;

- **The Kentucky Resource Market** ; This is a one-stop shop for aging and disability assistance. The Kentucky Resource market helps individuals and their families connect with the right services at the right time, right in their own community. The resource market provides information on private and public resources and service access assistance by phone, mail, or in person, online search function for local and statewide programs and services, printed materials, referrals to community resources, counseling to help the clients select the best options for their needs, workshops, seminars, follow-up with clients and ongoing communication with service providers to ensure prompt response and continuous quality improvement. The toll free number to the Kentucky Resource Market is 1-877-293-7447.
- **The Excellence in Nursing Home Initiative;** This initiative brings advocates, providers and representatives of the long term care industry together to discuss issues and plan for the future of long term care in Kentucky.
- **Consumer Directed Option;** This is a program for those persons on any of the eligible Medicaid Waivers including; Home and Community Based Services, Supports for Community Living (SCL) and Acquired Brain Injury (ABI). This program allows participants to hire their own caregivers and direct when and how services will be delivered.
- **Kentucky Consumer Directed Homecare Pilot;** Two area agencies on aging will pilot the states homecare program under the consumer directed model to divert persons at risk of spend down to Medicaid eligibility and at risk of nursing home placement.
- **Money Follows the Person;** A nursing home/ICFMR transition project to help those individuals who want to return to the community. MFP

assists the client to leave the nursing home with support of community based services in order to maintain them at home.

The Kentucky Elder Readiness Initiative (KERI) conducted statewide forums to discuss findings of the study which were specific to each area. KERI is a partnership between DAIL, the University of Kentucky's School of Gerontology, and the Area Agencies on Aging and Independent Living. KERI has challenged local communities to look at the issues facing the aging population so that the beginning of mobilization may be instituted. KERI staff traveled to each region and held community forums and focus groups to explore the challenges and strengths of each community regarding their aging population. It became obvious that there were similarities but also some vastly different and unique issues facing our communities. The major themes identified were 1) lack of public transportation or affordable transportation, 2) lack of affordable, accessible housing and 3) alternatives to long term care. A challenge was voiced to each community to begin addressing the issues before the wave of baby boomers overwhelms the system.

The Department for Community Based Services is moving forward on developing designated Adult Protective Services (APS) teams across the state. Each of the nine service regions has submitted their plan to Cabinet leadership detailing the projected structure of the APS teams in their areas. Many of the regions have already begun the interview and selection process for both frontline APS workers and for APS supervisors in their regions. It is an expectation that each region will have viable designated APS in place and operating by the end of 2008.

In keeping with progressive initiatives to improve identification, communication, and coordinated responses to reported cases of elder abuse, DCBS is currently piloting the electronic 115 in several regions. The 115 is the referral form by which DCBS becomes aware of reported instances of elder abuse. Although this initiative is not fully operational at this time, we have already received positive feedback from partnering agencies, and are diligently working out systems related problems before expanding this on a statewide level.

The Cabinet for Health and Family Services has worked diligently not only at strengthening partnerships with outside community agencies, but also within the confines of the Cabinet itself. DCBS has reached out to develop and strengthen relationships with the Department for Aging and Independent Living (DAIL), The Long Term Care Ombudsman (LTCO), The Department of Mental Health and Mental Retardation, and the Division of Family Support. As a result we see a more streamlined and coordinated effort in responding to the needs of the clients we have in common, which results in the development of more effective service delivery through the co-promotion of well defined individual resources and services.

Again this year, Kentucky was host to four major conferences; The Summer Series on Aging, The Crime Victims Conference, Ending Sexual Assault and Domestic Violence

Conference, and the Fall Conference on Healthy Aging. Largely through the Local Coordinating Councils, we also saw the growth of numerous smaller conferences and workshops, all promoting elder abuse awareness. This year's conferences saw participants from 20 different states, and inquiries from the countries of India and Turkey.

Although the more we learn about elder abuse, the more we realize we have much more to do to effectively combat the problem. It is an exciting time to be involved with this very important social crisis. Kentucky's commitment to its' most vulnerable citizens is evident. We are on the cutting edge when it comes to recognizing the problem of elder abuse, creating appropriate services and resources to meet the needs of our citizens, as well as creating the infrastructure to develop and maintain effective prevention tools.

Appendix A
Sub Committee Activities and
Memberships

Public Awareness/Resource Development Sub-Committee

Activities

The purpose of the Public Awareness/resource Development Sub-Committee is to review statewide elder abuse issues and concerns; the goals of which, are to develop and disseminate recommendations that will help increase community awareness, improve prevention programs, and enhance service delivery. It is our hope that the heightened awareness of elder abuse will enable Kentucky's seniors, and those who care for them, to recognize the signs and symptoms of elder abuse, and know how and to whom they can report suspected abuse.

This Sub-Committee has had another successful year in carrying out the intentions of HB 298. Our accomplishments for this year include;

- Creation of new statewide campaign with the catch phrase "ELDER ABUSE IS A CRIME....If You Suspect It, Report It ! 1-800-752-6200".
- Reproduced and distributed a number of informational pamphlets for the general public and community partners that detail signs and symptoms of Elder Abuse, provide statistics, and other related information in regards to Elder Abuse and Awareness.
- The Elder Abuse Awareness website continues to be updated with new information and trainings across the state.
- We have begun widespread distribution of the "Kentucky Fraud Fighter's Form", this form was brought to the attention of the National Center on Elder Abuse, who ran a national news story on the initiative, and has it placed on their national website for best practices. We have received inquiries from 9 states and the country of New Zealand, as a result of the article ran, on how they may obtain the form and take steps to implement it's use in their states and country!
- The 3rd annual Elder Abuse Awareness Rally was held at the state capital on June 15, 2007, and coincided with World Elder Abuse Awareness Day. The rally was covered by multi media outlets and received high attendance.
- We have conducted multiple community trainings to raise awareness of Domestic Violence in later life.
- We have begun planning for the 1st Annual Local Coordinating Council Summit. This is scheduled for June 12th in Frankfort, and will focus solely on supporting the grassroots efforts of our Local Coordinating Councils on Elder Abuse.
- Our committee members have spoken at multiple conferences and local workshops in an effort to educate and promote elder abuse awareness.
- Our initiatives have caught national attention and really placed a spotlight on KY and it's efforts to address elder abuse, as a result some of our members have been asked to join a national "Think Tank" comprised of nationally recognized leaders in the area of elder abuse.

We have successfully finished taping the FIRST EVER national campaign on Elder Abuse Awareness, with a celebrity spokesperson. We should finish final edits soon and be ready to promote and distribute the public service announcements in early 2008.

Membership

Kimberly Baker, Chairperson
CHFS/ P&P Director's Office
Kimberly.baker@ky.gov

Lori Farris
Office of Attorney General
Lori.farris@ag.ky.gov

Wendy Bauer
Senior Health Services
bauerww@healthall.com

Jackie Strader
Long Term Care Ombudsman
Jacquel.strader@ky.gov

Cindy Christensen
CHFS/DCBS
Cindy.christensen@ky.gov

Sue Thomas-Cox
CHFS/Dept. of Public Health
Sue.Thomas-Cox@ky.gov

Donna Collins
CHFS/DAIL
DonnaM.collins@ky.gov

Scott Wegenast
AARP
SWegenast@aarp.org

Guardianship Sub-Committee

Activities

The Subcommittee on Guardianship has met on a monthly basis over the last year via telephone and via in-person meetings in Frankfort and Richmond. Members of the committee are highly informed about and committed to issues of guardianship. These issues drive the substantive work of the committee.

This committee's accomplishments during SFY '07 are as follows;

1. **Kentucky Guardianship Association.** In the spring of 2007, the Subcommittee sent out a survey to persons in the public and private sectors who were intimately involved in Kentucky guardianship. Sue Crone, Reg White, and Pam Teaster reviewed the information provided and summarized it in a brief report (forthcoming).

David Godfrey created a website for KGA, which can be accessed at www.KentuckyGA.com. The website also contains membership information. The website will be expanded to include resources useful to family guardians.

David Godfrey drafted the Articles of Incorporation and bylaws for the Kentucky Guardianship Association (KGA). An organizational meeting was held on Monday, October 22nd at the Executive Inn West in Louisville, Kentucky. Approximately 30 people attended the first meeting, and dues were collected from those persons willing to join.

Elected officers are Pamela Teaster, President; Sue Crone, Secretary; and Adanne Bagby, Treasurer. A Board of Directors was also established: Becky Smith, GuardiaCare; David Godfrey, Access to Justice Foundation; and Jim Grace, Cabinet for Health and Family Services. One additional position on the Board is being sought. It is hoped that this position will be filled by a family guardian.

KGA members voted to affiliate with the National Guardianship Association. The affiliation will enhance the organization's visibility and promote networking opportunities with nationally recognized experts in the field.

Regular meetings of the organization will be held at least bi-monthly. In the planning stages are a statewide conference and training sessions, the subjects of which were identified in the surveys.

The following committees were formed: membership, research, and conference planning/public awareness. There were two initiatives proposed at the meeting. The first was to conduct a statewide study of public guardianship in Kentucky. The second was to develop a yearly guardianship conference.

2. **Public guardianship and legislation.** Through a working group of the subcommittee, problems related to inconsistent practices were identified, such as the misuse of emergency guardianship and the representation of respondents by attorneys appointed by the courts. Judge Brandy Brown, a member of the subcommittee co-presented at the Kentucky District Judges' Fall College on these and other issues.

In addition, the subcommittee is examining guardianship custody issues as a potential item for legislative reform. Subcommittee members continue to investigate and educate the guardianship community about legislative changes and proposed legislation that may impact the guardianship system (e.g., practices related to voting rights for disabled adults).

3. **Public guardianship audit.** A performance audit of public guardianship is being conducted by the KY Auditor of Public Accounts. Members of the subcommittee have been consulted on issues of interest related to the audit.
4. **Public guardianship and loss of institutional memory.** As cited in *Wards of the State: A National Study of Public Guardianship (2005)*, in the next year, Kentucky has the potential of losing two policy analysts, four regional supervisors, and a frontline worker, of all whom have been with the Cabinet over 20 years. Two of these persons have been working with the program since the early 1980s. The loss of these excellent employees, and their deep understanding of the complexities of guardianship represent a significant loss of institutional memory. The subcommittee recommends that efforts to retain this critical knowledge should be sought immediately.
5. **Attempts to solicit membership from the Administrative Office of the Courts.** Although the committee enjoyed brief representation from a representative from the Administrative Office of the Courts, repeated attempts at solicitation have proven unsuccessful. Having a member from this important entity in the guardianship system continues to hamper the efficacy of the committee.
6. **Attempt to secure a grant from the Borchard Foundation Center on Law and Aging.** David Godfrey and Pamela Teaster submitted a grant on guardianship to the Borchard Foundation Center on Law and Aging which was a request for proposals for creating guardianship networks. Though the proposal was one of only three submitted, it did not receive funding. Mr. Godfrey spoke directly with the ABA Commission for Law and Aging member in charge of the grant submittal process and was told that, while the proposal was generally acceptable, the review group determined that, without buy-in from the Administrative Office of the Courts, the proposal had little chance of success. This demonstrates another reason why the Guardianship Subcommittee needs consistent representation from a member of the Administrative Office of the Courts.

7. **Future focus of the Guardianship Subcommittee.**As of October, there are two entities now actively engaged in improving public and private guardianship in the Commonwealth. The Guardianship Subcommittee will develop work groups to undertake consideration of the following issues that arose during the course of last year;

- illegal aliens
- appointment on wards with criminal behaviors that are not found competent to stand trial or able to regain competency but do not meet criteria under 202A or 202B
- need for statute to address 202B for MRDD individuals with diagnosis of mild MR
- need for development of 202C related to acquired brain injury
- lack of crisis placements for any ward with aggressive behaviors
- lack of treatment and residential placements for individuals that have any history of sexual abuse of others including those that have actually been convicted as well as individuals that have never been found competent to face charges
- smoother transition and communication with the Court of Justice for wards who have been incarcerated

Working both separately and alongside the newly formed Kentucky Guardianship Association, the KGA will focus on public awareness, networking through development of an annual conference, and working with the courts to improve guardianship.

MEMBERSHIP

Sue Crone, Co-Chair
CHFS/Guardianship Branch
Sue.crone@ky.gov

Pam Teaster, PhD, Co-Chair
University of Kentucky
pteaster@email.uky.edu

Maureen Fitzgerald, J.D.
DPA/D P & A
Maureen.fitzgerald@ky.gov

David Godfrey, J.D.
Access to Justice Foundation
dgodfrey@mis.net

Reg White
CHFS/Guardianship Branch
Reg.white@ky.gov

Dona Whitenack
CHFS/DMR
Dona.whitenack@ky.gov

Adanne Bagby
CHFS/Guardianship Branch
Adanne.bagby@ky.gov

Jennifer Leibson
Jefferson Co. Commonwealth Atty's Office
Jennifer.Leibson@louisvilleky.gov

Jackie Strader
Long Term Care Ombudsman

Linda Keeton
CHFS/OLS

Jacquel.Strader@ky.gov

Whitney Hayse
CHFS/DAIL
WhitneyL.hayse@ky.gov

Steve Fisher
CHFS/Adult Safety Branch
Steven.fisher@ky.gov

Carolyn DelaRosa
CHFS/DMR
Caroline.delarosa@ky.gov

Linda.keeton@ky.gov

Wilson Wong
Researcher and Elder Abuse Expert
WilsonWong@insightbb.com

The Honorable Brandy J. Brown
District Judge, Dist. 25, Div 2
BrandyBrown@kycourts.net

Jennifer Webb
Clerk, District 25
jenniferwebb@KYCOURTS.net

Investigative Sub-Committee

Activities

In the past year the Investigative Sub-Committee has been active in supporting the implementation of Designated Adult Protective Services Teams in all 9 Service Regions. This was a formal recommendation of the Elder Abuse Committee from 2007 and is reflective of language contained in the 2005 revisions to KRS chapter 209. It is recognized that the move toward Designated APS Teams is a progressive step toward adopting a multidisciplinary investigative design that emphasizes victim safety, perpetrator accountability, and continuous quality improvement. Historically Jefferson, Fayette, Kenton, Boone and Campbell counties have had Designated APS Teams in place. These existing teams served as the impetus toward statewide implementation and as a model for design. Administrators representing all 9 Service Regions recognized that having specialized staff is critical in the ability of DCBS to provide improved responsiveness, consistent interpretation and application of statute and policy, and enhanced service provision to adult victims of abuse, neglect and exploitation. To this end, all Service Regions submitted a plan to DCBS Central Office for Designated APS Teams. Presently each Service Region is in the process of identifying qualified candidates, including supervisors, that will make up these teams. It is anticipated that Designated APS Teams covering all 120 counties will be in place by the end of state fiscal year 2008.

The Investigative Sub-Committee offers the following recommendations that are designed to support and dovetail with the implementation of Designated APS Teams.

Regionalized Interfacing opportunities for DCBS APS workers, law enforcement, and court personnel in elder abuse issues including investigative protocols. Regularly scheduled cross training events attended by partnering agencies within a specific geographic area will allow for and promote improved coordination, response, and resource development that is reflective of the community systems and tailored to the needs of the local client base.

Case Review Teams housed within the Local Coordinating Councils on Elder Abuse. These councils serve as an outstanding venue for all partnering agencies to meet, develop, refine, strengthen, and maintain healthy working relationships and lines of communication. Sub-Committees may be formed within these councils comprised of local DCBS staff, law enforcement and prosecutors to specifically address active APS investigations occurring within a specific geographic area. Ancillary service providers such as Senior Services, faith based organizations or other local social service agencies may be pulled in to assist in providing a comprehensive responses to adult abuse, neglect and exploitation that minimizes instances of cases “falling through the cracks”. The Case Review Sub-Committee allows for a community based approach that draws on local resources in responding to abuse, neglect and exploitation versus an inherently limited

response to a pervasive community problem that can be offered by a singular agency/entity.

CHFS partnering with KY universities to create a feeder system for APS staff. Presently CHFS is involved in a joint venture with KY public and private universities with an accredited social work program. It is the public child welfare certification program, (PCWCP). The CHFS pays BSW student tuition for the final two years and the student commits to employment with the CHFS for two years in the capacity of a child protection worker. The program provides BSW students with financial aide, educational credit for an internship with CHFS and employment following successful completion of degree requirements. The CHFS benefits from a consistent stream of qualified staff entering the workplace. This model, or similar legislation pass in the future, and become law, it may provide a funding stream to support this type of program.

MEMBERSHIP

Nikki Henderson, Chair
Office of Attorney General
Nikki.Henderson@ag.ky.gov

Steve Fisher
CHFS/DPP
Steven.fisher@ky.gov

Ed Barnes
Office of Inspector General
Ed.barnes@ky.gov

Cindy Venable
Louisville Metro Human Services
Cindy.venable@loukymetro.org

Todd Lewis
Jefferson County
Office of Commonwealth's Attorney
tlewis@louisvilleprosecutor.com

Ann Guitierrez
Lexington Fayette Urban County Police
Agutierr@LFUCG.com

Tanya Clark
Kentucky State Police
Tanya.clark@ky.gov

Data Sub-Committee

Activities

The Data Subcommittee has been active during the past year with the design and implementation of a research project entitled “A Week in the Life of APS”. This was prompted by the passage of HB 298 in 2005 and additional discussions with state and national stakeholders concerning the structure and function of Adult Protective Services staff. The subcommittee has meet, at least, monthly in the past year.

In most states, APS staff are the first responders to reports of abuse, neglect, and exploitation of vulnerable adults, which is also true in Kentucky. In order to discover best practice and service gaps, this study will:

- Capture a week (October 1 – October 7, 2007) in the life of APS in the Commonwealth of Kentucky by examining APS workflow, investigations, and procedures;
- Understand the perceptions of APS staff regarding APS workload; and,
- Present the findings to CHFS leadership in order to better define future staffing needs and resource procurement for vulnerable adults.

In Kentucky, all investigations, assessments and ongoing case management involving abuse, neglect, and exploitation of an adult, is documented in The Worker Information SysTem (TWIST), an automated documentation system of the Division of Protection and Permanency in the Department of Community Based Services. The University of Kentucky in collaboration with the Cabinet for Health and Family Services is utilizing this data to document a week in the life of Kentucky’s Adult Protective Services.

The study will utilize three modes of data collection: (a) a manual form for the Centralized intake of each case of abuse. This form will collect data on total number of reports to Kentucky Centralized Intake for adults 60 +, reasons for screening a report for investigation, source of report, staff to work ratio, and APS policies and procedures related to investigation. (b) DCBS data, which contains information related to time frames of report received and case closure, cost, investigation, demographic information of victims, and perpetrators, etc. DCBS data is collected by the Cabinet for each investigation and will be made available for review by the UK Research Team. The UK Team will code these data and will work in concert the Cabinet Team. (c) The modified Dynamic Family Assessment (DFA) template, which provides deeper information about each investigation than information obtained from the State data.

The UK team and the Cabinet for Health and Family Services (CHFS) team sent information about the study to all APS staff in the Commonwealth in late September, 2007. Centralized intake then received a blank template to capture time spent on each case during the week (October 1-7, 2007). Two weeks afterward, all APS staff conducting

investigations received another template to obtain deeper understanding on the cases than provided with the standard State data collected by the CHFS. Along with this form, APS staff received a codebook that provides information regarding the data requested. APS staff also received a cover letter that explains the purpose of the study and a consent letter that informed them about their rights as study participants. Responses are currently being collected by the Cabinet Research Team.

At the end of the project, participants will be surveyed to determine additional systemic issues related to APS that need to be addressed. Once the analysis of all data is complete, findings will be presented to both CHFS and legislative leadership.

MEMBERSHIP

Jim Grace, Co-Chair
CHFS/DPP
James.grace@ky.gov

Kathy Gannoe
Bluegrass Long Term Care Ombudsman
Ombuddy1@aol.com

Pamela Teaster, Co-Chair
University of KY
pteaster@uky.edu

Sarah Wilding
CHFS/Public Health
Sarah.wilding@ky.gov

Tanya Clark
KSP
Tanya.clark@ky.gov

Wilson Wong
Elder Abuse Expert
WilsonWong@insightbb.com

Shari Gibson
CHFS/OIT
Shari.gibson@ky.gov

Training Sub-Committee

Activities

- Subcommittee members met and reviewed lesson plans/training guides for various elder abuse trainings. DCBS is complying with KRS 194A.545 training and continuing education courses for staff of Department for Community Based Services with a one day curriculum for non-Adult Protective Service staff and a separate three and ½ day training for all new P&P hires and specialized Adult Services team staff. DOCJT has addressed requirements of KRS 15.334 mandatory training courses for law enforcement students and certified peace officers. Additionally, DOCJT initiated specific elder abuse training this year with a 5 day curriculum.
- At the request of the chair of the Training Subcommittee, a representative attended The Council on Domestic Violence and sexual assault training subcommittee meeting in January 2007 and reviewed the inclusion of elder abuse into the legislative mandate for domestic violence training. Both Training Subcommittees expressed their preference to be the two issues would be independent with separate trainings to address the needs of each population rather than a single training to cover both. The issue of older victims of domestic violence was recommended to be included into both trainings as they have unique concerns.
- Subcommittee members met with Sarah Wilding and trainers from Public Health to assist curriculum preparation of the KRS194A.540 mandated training courses for health-care providers (c) Physicians who practice primary care, as defined in KRS 164.925, and (d) Nurses licensed under KRS Chapter 314. The course was developed as a web based online presentation.
- The subcommittee recommended to the Cabinet for Health and Family Services that KRS 194A.540 did not require that DCBS provide training or provide staff to train the various health-care or mental health professional identified in subsection (1). In review, the subcommittee advised the requirement is to consult with and develop training for the applicable licensure boards. The subcommittee requested copies of various elder abuse training lesson plans/training guides and both the DCBS Training Branch and DPP Adult Services Branch are maintaining a repository for other professionals to utilize for curriculum development.

- The subcommittee recommended that various applicable licensure boards be contacted by the Cabinet and that inquiry be made to secure:
 1. a contact for each board or association
 2. their willingness to be involved in training process
 3. the awareness of HB298 requirements
 4. any training guides that has been developed
 5. their monitoring process to assure compliance

Membership

Linda Taylor, Chairperson (retired)
CHFS/Training Branch

David Gutierrez
CHFS/CADV
David.gutierrez@ky.gov

John Kaplan (Acting chair)
CHFS/Training Branch
John.kaplan@ky.gov

Steve Fisher
CHFS/Adult Safety Branch
Steven.fisher@ky.gov

Bill Cooper
CHFS/DAIL Deputy Commissioner
Bill.Cooper@ky.gov

Ken Schwendeman
DOCJT
Ken.schwendeman@ky.gov

Ernie Dudleson
DOCJT
Ernie.dudleson@ky.gov

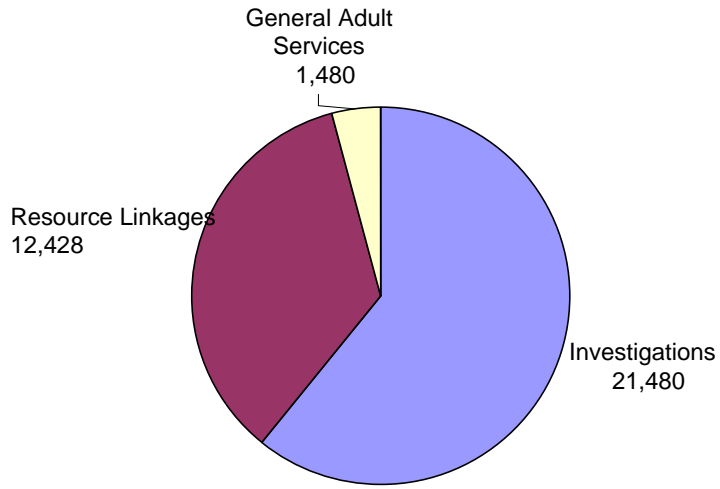
Bonnie Buchanan
Lou. Metro Office for Aging/Disabled
bonnie.buchanan@loumetro.com

Cathy Allgood Murphy
AARP
cmurphy@aarp.org

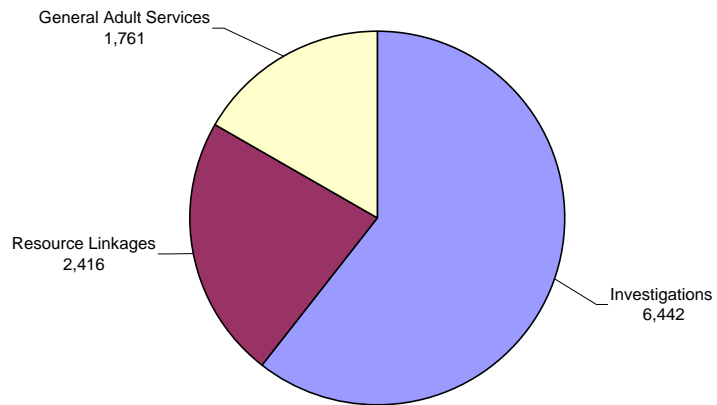
Sarah Wilding
CHFS/DPH
Sarah.wilding@ky.gov

APPENDIX B
DATA

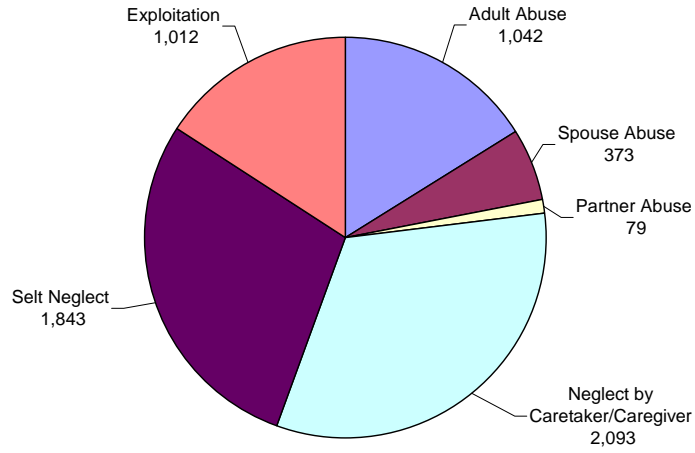
Statewide APS Workload for the Under 60 Population SFY 07



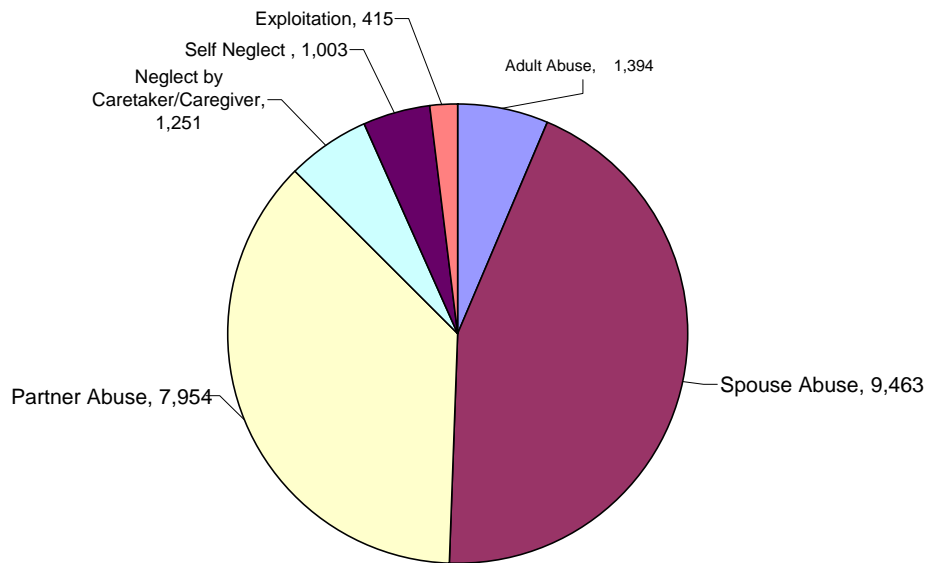
Statewide APS Workload for the Over 60 Population SFY 07



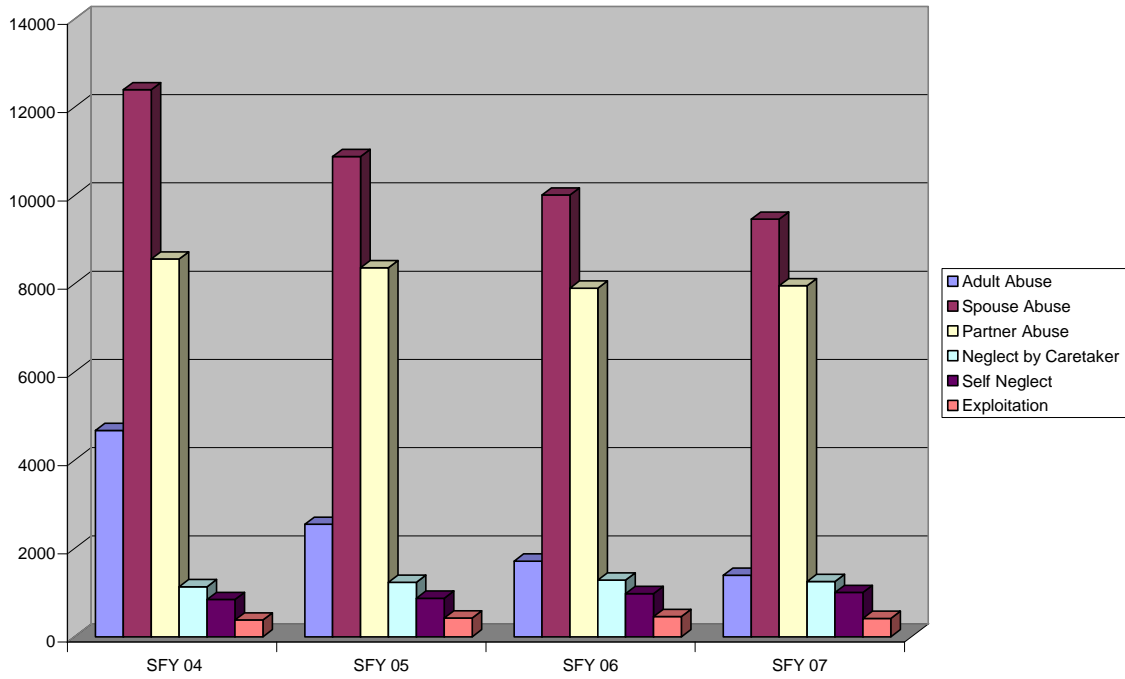
Investigations by Type for 60 plus Population - SFY 07
Total Cases 6,442



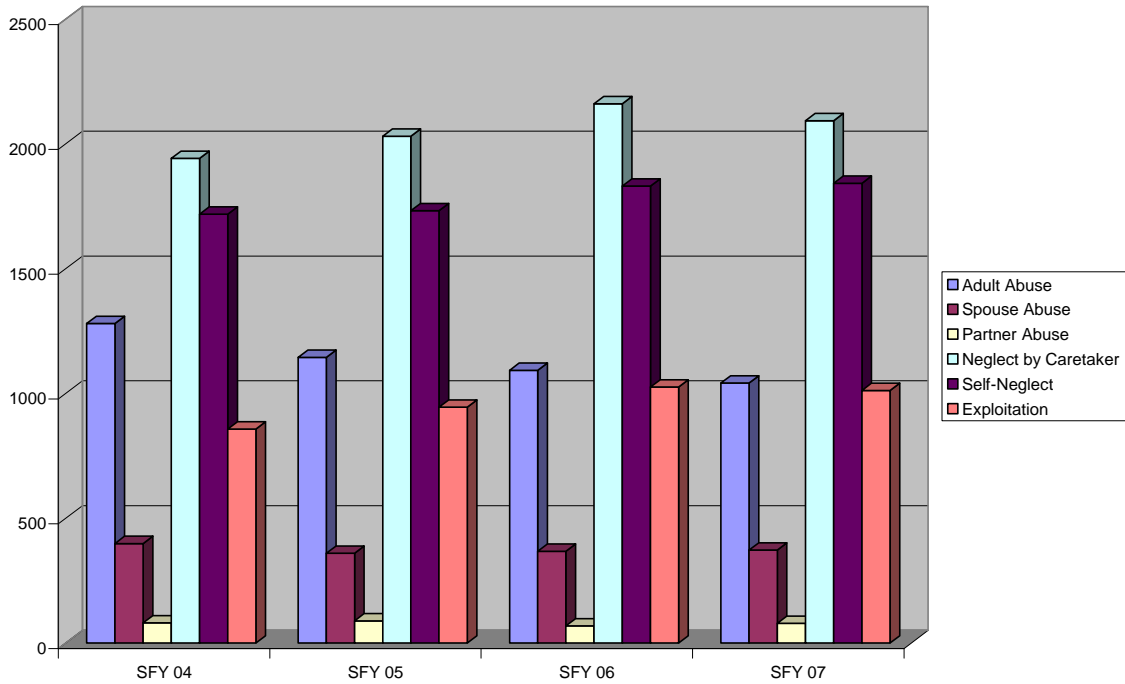
Investigation by Type for the Under 60 Population for SFY 07
Total Cases 21,480



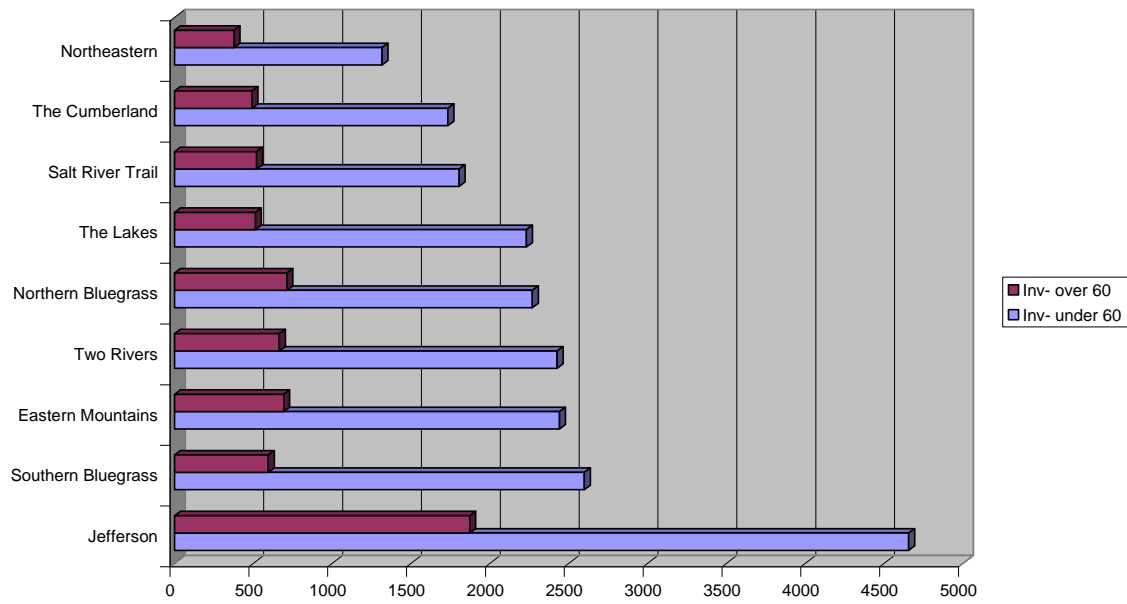
Investigations Trends for Under 60 Population. From SFY 04 to 07



Investigations Trends for Over 60 Population. From SFY 04 to 07



Total APS Investigations by Region. Compare populations over/under age 60 for SFY 07



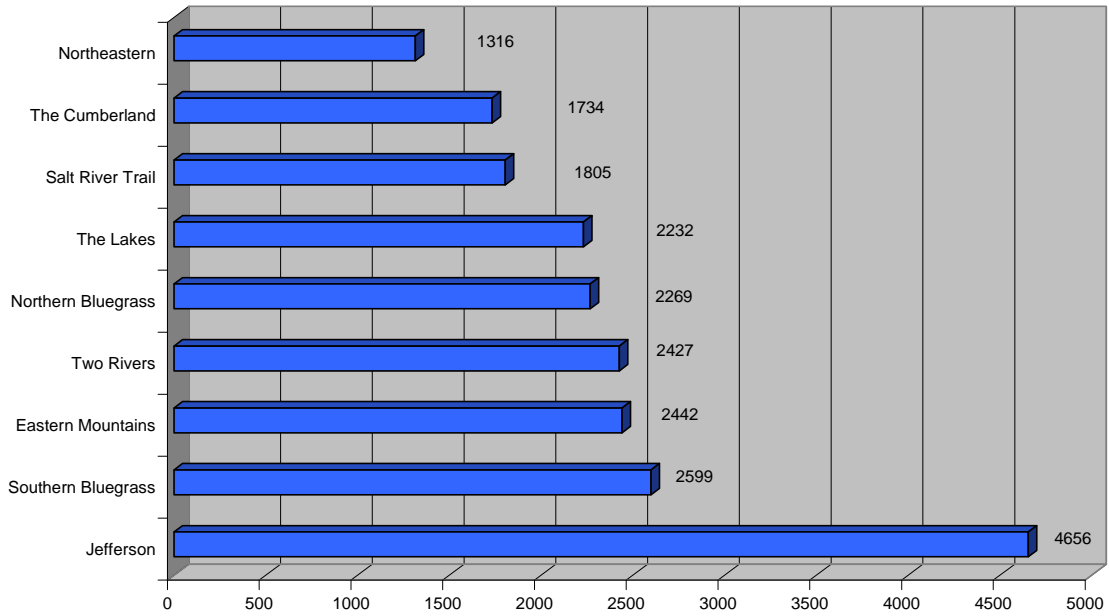
10/23/2007 SFY 07 TWS Investigations for APS under60
Population

<u>Region</u>	<u>Reports</u>	<u>Investigations</u>	<u>Resource Link</u>	<u>Gen Adult Svcs</u>	<u>Adult Abuse</u>	<u>Spouse Abuse</u>	<u>Partner Abuse</u>	<u>Neglected by Caretaker</u>	<u>Self Neglect</u>	<u>Exploitation</u>
Eastern Mountains	3893	2442	1688	171	327	1256	532	180	111	36
Jefferson	5364	4656	551	131	234	1514	2111	294	368	135
Northeastern	1836	1316	415	88	147	601	432	60	57	19
Northern Bluegrass	3186	2269	674	161	84	988	993	73	67	64
The Lakes	5309	2232	2830	200	105	1067	873	92	67	28
Southern Bluegrass	4342	2599	1381	224	86	1114	1141	138	68	52
The Cumberland	3469	1734	1621	184	152	912	403	167	74	26
Salt River Trail	3351	1805	1366	153	162	897	561	118	45	22
Two Rivers	4638	2427	1902	168	97	1114	908	129	146	33
Statewide Total:	35388	21480	12428	1480	1394	9463	7954	1251	1003	415

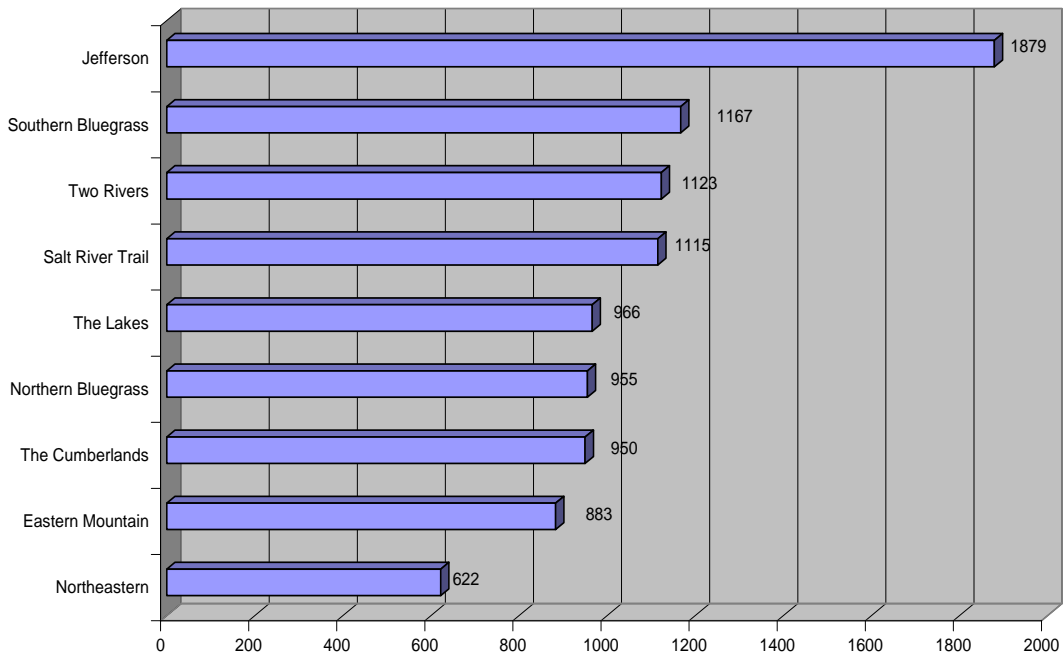
08/13/2007 SFY 07 TWS Reports and Investigations for APS 60plus Population
From 07/01/2006
to 06/30/2007

<u>Region</u>	<u>Reports</u>	<u>Investigation</u>	<u>Gen Adult Svcs</u>	<u>Resource Link</u>	<u>Adult Abuse</u>	<u>Spouse Abuse</u>	<u>Partner Abuse</u>	<u>Neglected by Caretaker</u>	<u>Self Neglect</u>	<u>Exploitation</u>
Eastern Mountains	883	693	178	192	115	45	2	247	181	103
Jefferson	1879	1872	203	98	310	74	21	534	593	340
Northeastern	622	378	146	106	52	25	5	116	142	38
Northern Bluegrass	955	713	251	159	126	42	8	191	186	160
Salt River Trail	1115	521	162	470	69	34	9	165	161	83
Southern Bluegrass	1167	596	243	418	95	48	11	217	133	92
The Cumberland	950	491	201	341	87	39	3	161	130	71
The Lakes	966	513	161	344	96	30	8	216	110	53
Two Rivers	1123	665	216	288	92	36	12	246	207	72
Statewide Total:	9660	6442	1761	2416	1042	373	79	2093	1843	1012

APS Investigations by Region for SFY07. Under 60 Population

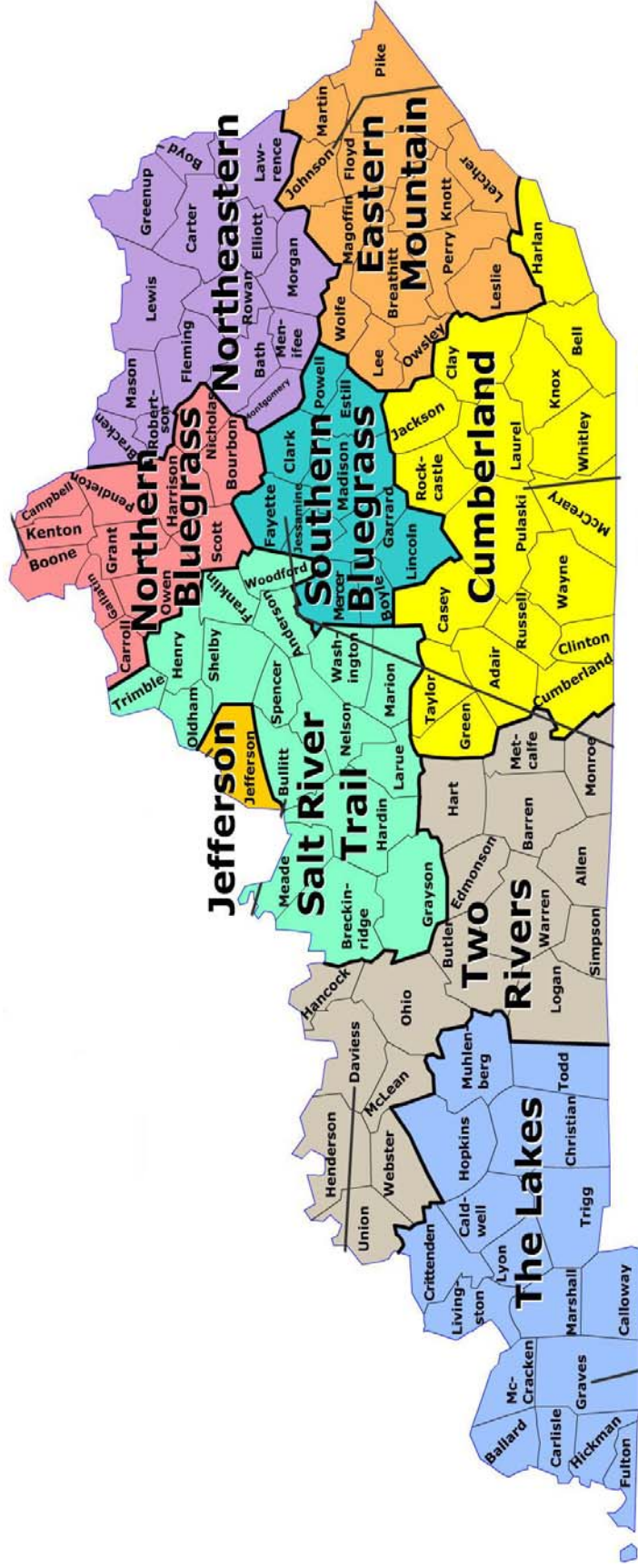


APS Investigations by Region for SFY 07. Over 60 Population



Appendix C
Figures

DCBS Service Regions



Guardianship Fiduciary Branch
 Phone: 502-564-2927
 Adanne Bagby, Branch Manager
 David Boswell, Fiduciary Section
 Supervisor

2007

GUARDIANSHIP REGIONAL STAFF

Niki Kippenbrock, FSOS
 Phone: 859-371-8832 ext

Diana Day, FSOS
 Phone: 606-920-2050

Johnny Caudill, FSOS
 Phone: 606-889-1736

Gary Bruin, FSOS
 Phone: 502-564-5390

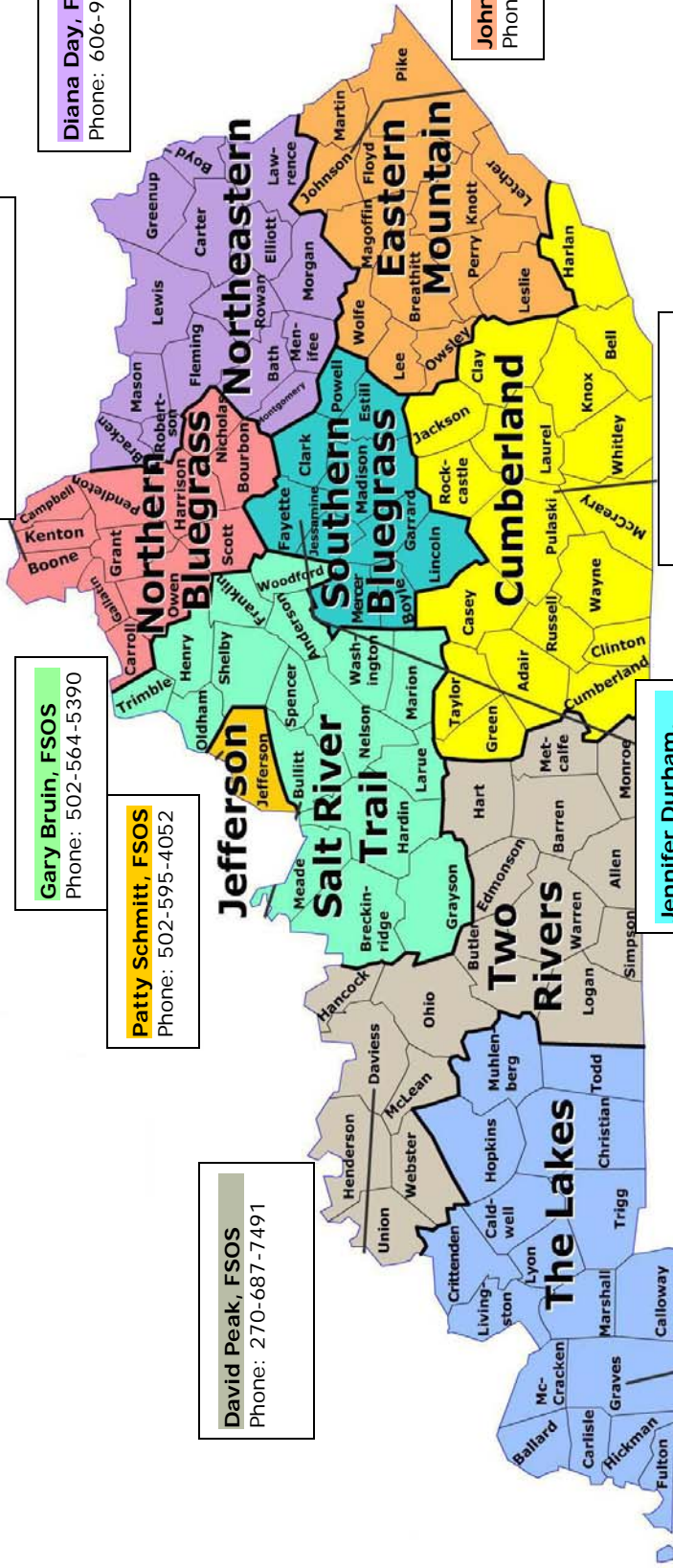
Patty Schmitt, FSOS
 Phone: 502-595-4052

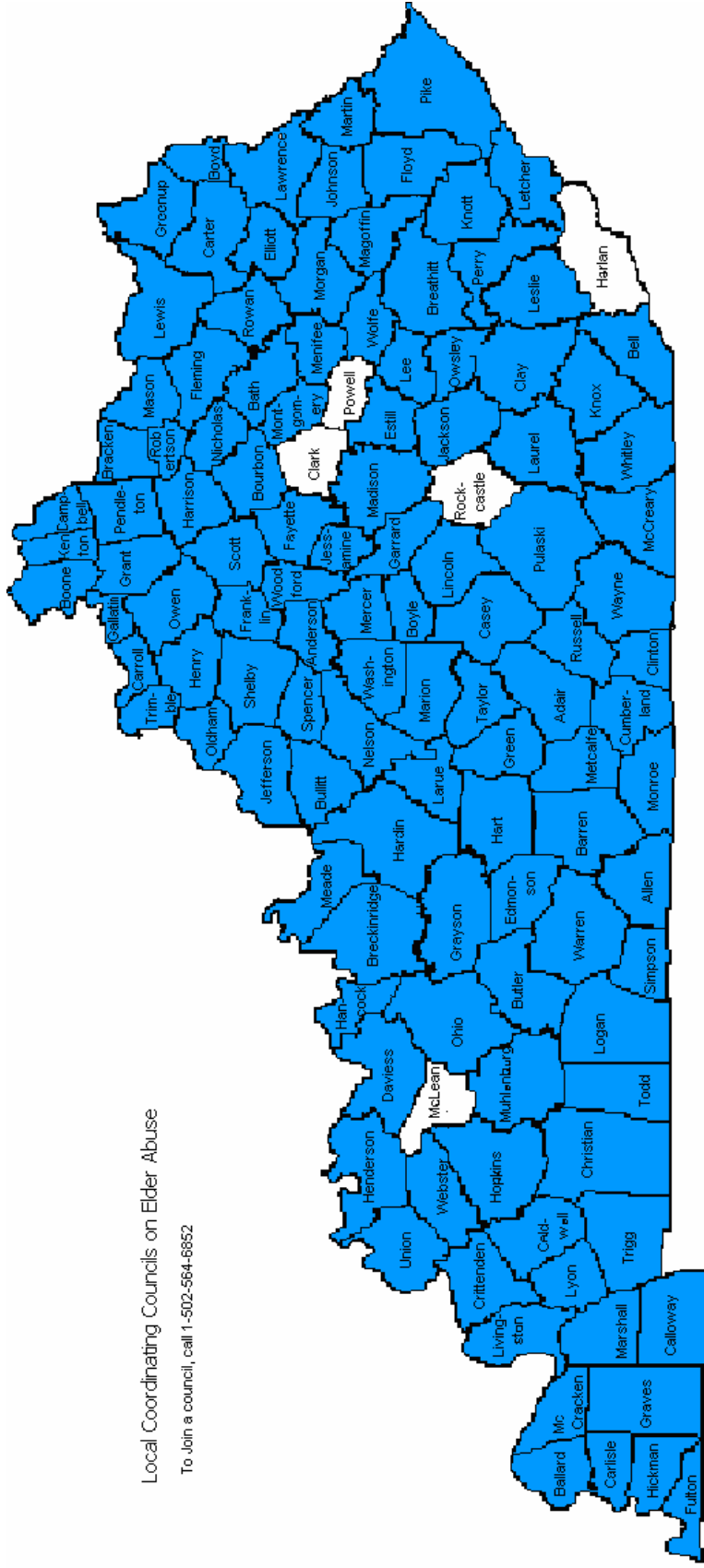
David Peak, FSOS
 Phone: 270-687-7491

Jennifer Durham, FSOS
 Phone: 859-245-5748

Rod Thayer, FSOS
 Phone: 606-677-4210

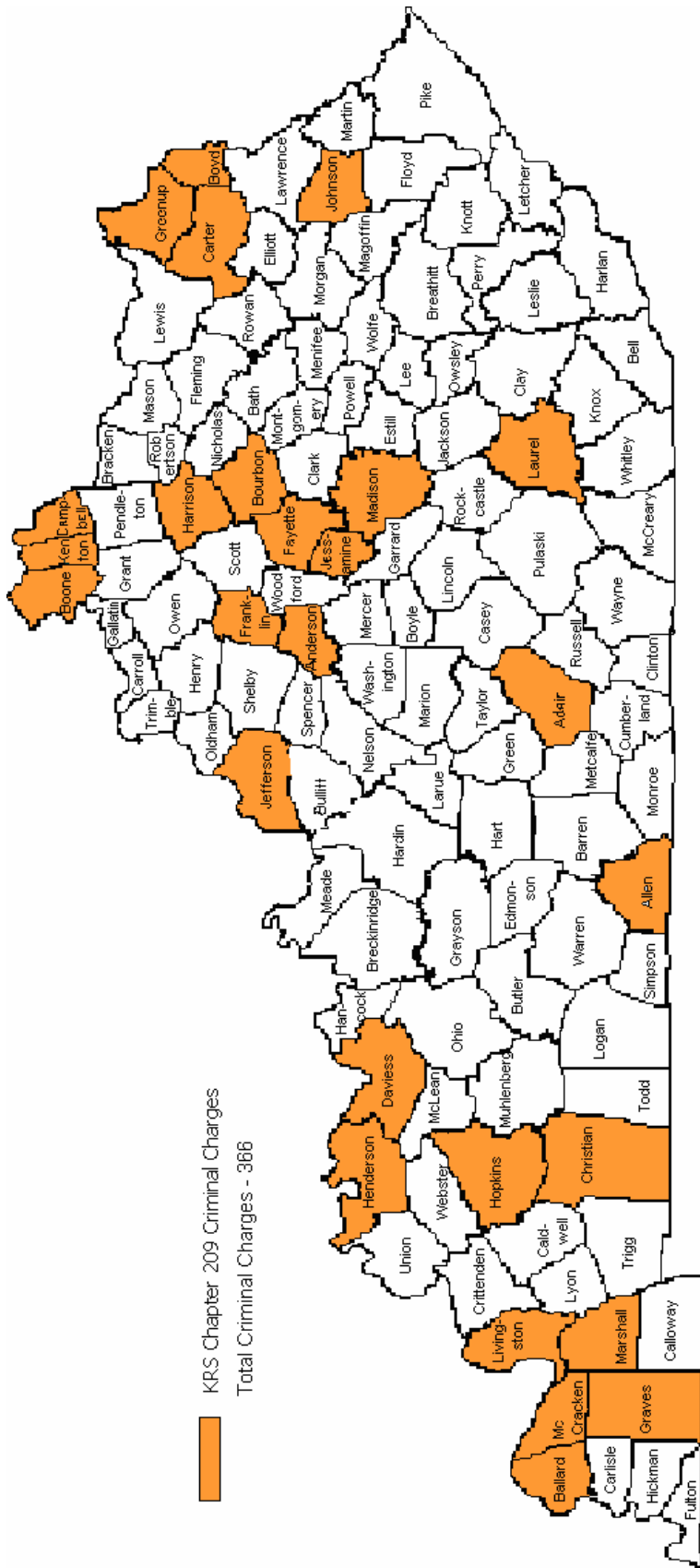
Sherry Thomas, FSOS
 Phone: 270-889-6025 ext 387
 LuAnne VanBenschoten





Local Coordinating Councils on Elder Abuse

To join a council, call 1-502-564-6852



APPENDIX C

KRS Chapter 209, and 209A

Kentucky Administrative Regulations

922 KAR 5:090, General Adult Service

922 KAR 5:070, Adult Protective Service

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.

KRS Chapter 209A

Kentucky Adult Protection Act

209A.010 Purpose of chapter.

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

Effective: June 20, 2005

History: Created 2005 Ky. Acts ch. 132, sec. 20, effective June 20, 2005.

209A.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 without regard to age who is the victim of abuse or neglect inflicted by a spouse;
- (5) "Protective services" means agency services undertaken with or on behalf of an adult in need of protective services who is being abused or neglected. These services may include but are not limited to conducting investigations of complaints of possible abuse or neglect to ascertain whether or not the situation and condition of the adult in need of protective services warrants further action, including action under KRS Chapter 209, and social services aimed at preventing and remedying abuse or neglect;
- (6) "Abuse" means the infliction of injury, unreasonable confinement, intimidation, or punishment resulting in physical harm or pain, including mental injury;
- (7) "Investigation" shall include but is not limited to a personal interview with the individual reported to be abused or neglected. When abuse or neglect is allegedly the cause of death, a coroner's or doctor's report shall be examined as part of the investigation;
- (8) "Records" means the medical or mental health records of the adult that are in the possession of any individual, hospital, firm, corporation, or other facility if necessary to complete the investigation mandated in KRS 209.030(5);
- (9) "Neglect" means a situation in which a person deprives his spouse of reasonable services to maintain health and welfare; and
- (10) "Authorized agency" means:
 - (a) The Cabinet for Health and Family Services;
 - (b) A local law enforcement agency or the Kentucky State Police; or
 - (c) The office of a Commonwealth's attorney or county attorney.

Effective: June 20, 2005

History: Created 2005 Ky. Acts ch. 132, sec. 21, effective June 20, 2005.

Legislative Research Commission Note (6/20/2005). 2005 Ky. Acts chs. 11, 85, 95, 97, 98, 99, 123, and 181 instruct the Reviser of Statutes to correct statutory references to agencies and officers whose names have been changed in 2005 legislation confirming the reorganization of the executive branch. Such a correction has been made in this section.

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209A.030 Administrative regulations -- Reports of abuse or neglect -- Cabinet actions -- Penalty for failure to report abuse or neglect.

(1) The secretary may promulgate administrative regulations in accordance with KRS Chapter 13A to effect the purposes of this chapter. The secretary may offer or cause to be offered protective services for safeguarding the welfare of an adult who has experienced abuse or neglect inflicted or caused by a spouse. While the cabinet shall continue to have primary responsibility for investigation and the provision of protective services under this chapter, nothing in this chapter shall restrict the powers of another authorized agency to act under its statutory authority.

(2) Any person, including but not limited to physician, law enforcement officer, nurse, social worker, cabinet personnel, coroner, medical examiner, mental health professional, alternate care facility employee, or caretaker, having reasonable cause to suspect that an adult has suffered abuse or neglect, shall report or cause reports to be made in accordance with the provisions of this chapter. Death of the adult does not relieve one of the responsibility for reporting the circumstances surrounding the death.

(3) An oral or written report shall be made immediately to the cabinet upon knowledge of suspected abuse or neglect of an adult.

(4) Any person making such a report shall provide the following information, if known:

(a) The name and address of the adult;

(b) The age of the adult;

(c) The nature and extent of the abuse or neglect, including any evidence of previous abuse or neglect;

(d) The identity of the perpetrator, if known;

(e) The identity of the complainant, if possible; and

(f) Any other information that the person believes might be helpful in establishing the cause of abuse or neglect.

(5) Upon receipt of the report, the cabinet shall take the following action:

(a) Notify the appropriate law enforcement agency, if indicated;

(b) Initiate an investigation of the complaint; and

(c) Make a written report of the initial findings together with a recommendation for further action, if indicated.

(6) Any representative of the cabinet may enter any health facility or health service licensed by the cabinet at any reasonable time to carry out the cabinet's responsibilities under this chapter.

(7) Any representative of the cabinet actively involved in the conduct of an abuse or neglect investigation under subsection (5) of this section shall also be allowed access to the mental and physical health records of the adult which are in the possession of any individual, hospital, or other facility if necessary to complete the investigation mandated by this section.

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209A.040 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.

Effective: June 20, 2005

History: Created 2005 Ky. Acts ch. 132, sec. 23, effective June 20, 2005.

209A.050 Immunity from civil or criminal liability for good faith performance of duties.

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

Effective: June 20, 2005

History: Created 2005 Ky. Acts ch. 132, sec. 24, effective June 20, 2005.

209A.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.

Effective: June 20, 2005

History: Created 2005 Ky. Acts ch. 132, sec. 25, effective June 20, 2005.

209A.070 Confidentiality of the identity of domestic violence program clients or former clients.

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

Effective: June 20, 2005

History: Created 2005 Ky. Acts ch. 132, sec. 26, effective June 20, 2005.

209A.080 Confidentiality of spousal abuse or neglect investigation information -- Exceptions.

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, 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, social service agency, law enforcement, or other authorized agency that has a legitimate interest in the case;
- (4) Cases in which a court orders the release of the information; and

(5) The alleged abused or neglected person.

Effective: June 20, 2005

History: Created 2005 Ky. Acts ch. 132, sec. 27, effective June 20, 2005.

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922 KAR 5:090 General Adult Services

RELATES TO: KRS 209.020(4), (6), (7), (8), (15), 210.290, 403.720(2)

STATUTORY AUTHORITY: KRS 194A.050(1), 209.035, EO 98-731

NECESSITY, FUNCTION, AND CONFORMITY: KRS 209.035 requires the Cabinet for Health and Family Services to promulgate administrative regulations to establish criteria for general adult services. This administrative regulation establishes the general adult services program.

Section 1. Definitions. (1) "Abuse" is defined at KRS 209.020(7).

(2) "Adult" is defined at KRS 209.020(4).

(3) "Cabinet" means the Cabinet for Health and Family Services.

(4) "Caretaker" is defined at KRS 209.020(6).

(5) "Exploitation" is defined at KRS 209.020(8).

(6) "Family member" is defined at KRS 403.720(2).

(7) "General adult services" means a voluntary preventive service aimed at assisting:

(a) An adult to attain and function at his highest level of self-sufficiency and autonomy; and

(b) In maintaining the adult in the community.

(8) "Neglect" is defined at KRS 209.020(15).

Section 2. Criteria for Intake and Assessment. (1) If a social service worker and the adult agree, an individual eighteen (18) years of age or older shall be eligible for general adult services:

(a) If he is:

1. Mentally or physically dysfunctional and not in an abuse, neglect or exploitation situation; and

2. Requesting the service or in a situation where service is requested at the direction of an individual through another individual or agency;

(b) If an allegation of abuse, neglect, or exploitation is made and the alleged perpetrator is a:

1. Former spouse;

2. Former cohabiting partner; or

3. Partner with a child in common; or

(c) If he requests a transitioning service from out-of-home care within twelve (12) months of release from the cabinet's commitment.

(2) An individual sixty-five (65) years of age or older shall be eligible for general adult services if he is:

(a) Not mentally or physically dysfunctional; and

(b) Allegedly being abused, neglected or exploited by a:

1. Family member;

2. Household member; or

3. Caretaker.

Section 3. Time Frame. An adult services assessment shall be:

(1) Be initiated within three (3) working days of receipt of the request for services; and

(2) Include completion of the Adult Narrative/Investigation/Assessment form within forty-five (45) working days of initiation.

Section 4. Tracking information on general adult services shall be maintained by the cabinet for administrative purposes.

Section 5. Appropriate and necessary service provision shall include:

- (1) Information and referral;
- (2) The assessment; and
- (3) Supportive and on-going services including that, if required by the circumstances, include:
 - (a) Services focusing on prevention;
 - (b) Social work counseling; and
 - (c) Arranging transportation.

Section 6. Incorporation by Reference. (1) The Adult Narrative/Investigation/Assessment Form, edition 11/99, is incorporated by reference.

(2) This material may be inspected, copied, or obtained 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. (26 Ky.R. 1327; Am. 1579; eff. 2-1-2000.)

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
List of Resources Cited

Resources Cited

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