Prosecuting Cases with Elderly or Vulnerable Adult Victims

2007 Victim Assistance Conference

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Goals

- Become familiar with the OAG Prosecution Manual for Crimes Against the Elderly
- Learn the roles and responsibilities of various professionals involved in
  - Detection
  - Investigation
  - Prosecution

OAG Prosecution Manual for Crimes Against the Elderly

- Study by Program Review & Investigations Committee
- 2005 House Bill 298
- Manual is 618 page volume addressing roles of:
  - Law enforcement
  - Prosecutors
  - Physical and Emotional Abuse, Neglect & Exploitation
  - Elder Homicide
  - Fraud & Financial Exploitation
  - Victims Advocacy
  - MFCU
  - Civil Remedies
  - Appendices

Department for Community Based Services Adult Protective Services

- KRS Chapter 209*
  - Mandatory Reporting
  - Abuse
  - Neglect
  - Exploitation
- KRS Chapter 209A (for reporting and getting services to DV victims)
  - Spousal Abuse
  - Spousal Neglect
- Penal Code Offenses

Offenses charged under KRS Chapter 209 may result in a more severe penalty than those charged under the Penal Code

KRS 209.030
Cooperation among agencies and notifications to law enforcement

- **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.

KRS 209.030

- (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.

KRS 209.030

- (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.
- (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.

- **Effective:** June 20, 2005
- **History:** Amended 2005 Ky. Acts ch. 132, sec. 3, effective June 20, 2005. -- Amended

Law Enforcement

- Generally, unfamiliar with this statute
  - Penal Code offenses usually the focus of law enforcement
- Training ongoing
  - DOCJT
    - Basic
    - In-service
  - Prosecutor's Manual
- Cabinet for Health & Family Services (CHFS) to coordinate with law enforcement [KRS 209.030 (6)]

Law Enforcement Training

- **15.334 Mandatory training courses for law enforcement students and certified peace officers -- Administrative regulations -- Annual report.**
- (1) The Kentucky Law Enforcement Council shall approve mandatory training subjects to be taught to all students attending a law enforcement basic training course that include but are not limited to:
- **(a) Abuse, neglect, and exploitation of the elderly and other crimes against the elderly, including the use of multidisciplinary teams in the investigation and prosecution of crimes against the elderly;**
- **Effective:** June 20, 2005
- **History:** Created 2005 Ky. Acts ch. 132, sec. 11, effective June 20, 2005.
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Prosecutors

- Medicaid Fraud & Abuse Control Division
- Consumer Protection Division
- Local Commonwealth's and County Attorneys
- KRS 209.180
  - (1) Attorney trained in adult abuse
  - (2) Active part in interviewing; inform adult
  - (3) One attorney throughout
  - (4) Minimize involvement of adult
  - (5) Make referrals; explain decisions not to prosecute

Victim Advocates

- Crime Victims' Bill of Rights
  - Victim impact statements – tape?
- Victim Advocate's Roles
  - Internal to legal system
  - External to legal system
- Victim Services
  - Crime victim compensation
  - Victim, witness and family protection
  - VINE
  - KOOL

Victim Advocates

- Special Considerations for Working with Elderly Victims
  - Special needs
  - Effective communication
- Innovative Programs
  - Multidisciplinary Case Review Teams
  - Fatality Review Teams
  - Local Coordinating Councils
  - Emergency Crisis Response Teams

Civil Remedies

- Imprisonment of perpetrator
- Alternatives to Guardianship
  - Power of Attorney
  - Health Care Surrogate
  - Curator
  - Representative Payee
  - *Inter Vivos* Trust
- Guardianship
- Protective Orders
- Other Civil Remedies

Changes Directly Impacting the Courts

- KRS 21A.170 – In-service training for judges
  - Previously addressed child abuse and domestic violence
  - Now includes crimes against the elderly

Court Training Issues

- Effects of crimes against the elderly
- Legal remedies for protections
- Lethality and risk issues
- Financial implications
- Multidisciplinary councils
- Community resources and victim services
- Reporting requirements

Questions?

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