Investigating Elder Abuse Cases

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Our goals for this training are to answer…

- Who does KRS 209 protect?
- What crimes are addressed by KRS 209?
- What is the reporting requirement?
- What will law enforcement do once a report is made?
- Are there other remedies?

KRS 209- Protection of Adults

- Purpose of the chapter
  - 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.
  - To ensure reporting of such cases.
  - To promote coordination and efficiency among agencies and entities that respond to abuse, neglect, or exploitation of adults.

Who is an adult?

- A person 18 years of age or older, AND
- Because of mental or physical dysfunctioning IS
- Unable to manage his own resources, carry out the activity of daily living, or protect himself…without the assistance of others, and who may be in need of protective services.

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- Guardianship
- POA

What Crimes are Addressed by KRS 209?

- Definitions:
- Abuse- infliction of injury, sexual abuse, unreasonable confinement, intimidation, or punishment that results in physical pain or injury, including mental injury.
  - Injury that is inconsistent with explanation.
  - Cuts, puncture wounds, burns, bruises, welts.
  - Fear, anxiety, depression, hesitation to talk openly.

Definitions Continued…

- Neglect- 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 welfare of an adult.
  - Dehydration, malnutrition without medical cause.
  - Lack of necessities, or personal effects.
  - Soiled clothing or bedding.

Definitions continued

- Exploitation- 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.
  - Adult's financial papers are missing
  - Unpaid bills
  - New will or legal documents that adult seems incapable of understanding
  - Caregiver added to bank accounts
  - adult unable to advise income, loans, checks to "cash", forged signatures.

Offenses depend upon the suspect's mental state

- Intentionally- His conscious objective is to cause that result or to engage in that conduct.
- Knowingly- He is aware that his conduct is of that nature or that the circumstance exists.
- Wantonly- He is aware of and consciously disregards a substantial and unjustifiable risk that the result will occur or that the circumstance exists. The disregard thereof constitutes a gross deviation from the standard of conduct that a reasonable person would observe in the situation.
- Recklessly- He fails to perceive a substantial and unjustifiable risk that a result will occur or that the circumstance exists. Also a gross deviation.

Offenses

- Knowing abuse or neglect- C felony, 5-10 years
- Wanton abuse or neglect- D felony, 1-5 years
- Reckless abuse or neglect- A Misdemeanor, 6-12 months &/or fine.
- Knowing exploitation o/$300- C felony.
- Wanton or Reckless exploitation o/$300- D felony.
- Knowing, Wanton or Reckless exploitation U/$300- A Misdemeanor.
- Failure to report- B misdemeanor, 1-3 months &/or fine.

Reporting of Abuse, Neglect, or Exploitation

- KRS 209.030
  - 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… Death of the adult does not relieve one of the responsibility for reporting the circumstances surrounding the death.

The report is made…

- By oral or written means IMMEDIATELY to the CABINET upon knowledge of suspected abuse, neglect or exploitation.

Who is the Cabinet?

- Adult Protective Services
  - (800)752-6200.
  - In Fayette Co. 859-245-5414.

What to include in the referral.

- You may be anonymous!
- Provide, if known,
  - Name and address of adult and caregiver.
  - Age of adult.
  - Nature of abuse, neglect, or exploitation.
  - Identity of perpetrator.
  - Any other helpful information.

Immunity from civil or criminal liability

- KRS 209.050 requires only that you be acting in good faith when you make the report. If so, you are immune from liability should the victim or perpetrator or any one else try to sue or charge you criminally.

What happens next…

- Upon receipt of the report, the cabinet shall conduct an initial assessment and…
  - Within 24 hours, or sooner if emergency, notify law enforcement.
  - Notify other authorized agencies (OAG, Commonwealth's or County attorneys, etc…).
  - Initiate an investigation.
  - Make a report of initial findings with a recommendation for further action.

The Joint Investigation: Law Enforcement and APS

- Law enforcement asks "What can those social workers do for me?".
  - Plenty!
  - KRS 209.030 (7)- With an active investigation, (APS) has immediate access to financial records, mental and physical health records from any hospital, firm, financial institution, corporation, or other facility… And they can share the information with YOU!
  - Provide services to victim and family, which makes your investigation easier.

Joint Investigation: Law Enforcement and APS

- Social Workers ask, "Why do we care what law enforcement does?".
  - Can provide for safety when dealing with violent or threatening caregivers, perpetrators, or victims.
  - Put perpetrators in jail! Hopefully, reducing repeat cases.

What are the responsibilities of Law Enforcement?

- Once the case is received by law enforcement and has been verified as adult abuse, neglect, or exploitation…
  - Identify the victim, interview and respond to their immediate needs. Victim comes first!
    - LE's interview with the victim is to verify that they can be considered an adult, get medical attention, if necessary, and to identify the crime committed.

LE Responsibilities

- Protect and preserve the crime scene and evidence.
  - Photograph scene &/or victim. Keep the likelihood of contamination minimal.
- Identify and interview all potential witnesses.
  - Record all statements, if possible.

LE Responsibilities

- Collect all evidence.
  - Financial documents.
  - Sexual Assault Evidence Recovery Kits.
- Investigate, interview/interrogate the perpetrator.
  - We want a confession, of course!

LE Responsibilities

– Make the final disposition.
  - Arrest.
  - Pending for further information.
  - Cleared by exception.

Other Remedies

- Not all cases can or should end with prosecution!
- Adult victims may know their circumstances better than you ever will.
- What are the other options?

Alternatives to Criminal Proceedings

- Guardianship or Conservatorship.
- Power of Attorney.
- Health Care Surrogate.
- Representative Payee.
- Emergency Protective Order.
- Civil lawsuit- Negligence by caregiver, breach of contract. These are for monetary judgment, usually.

Resources

- OAG Prosecution Manual for Crimes Against the Elderly. Updated every other year.
- OAG's elder abuse tip line: 877-228-7384.
- National Center on Elder Abuse- Elder Abuse Awareness Kit. www.elderabusecenter.org
- Local Area Agency on Aging.
- Local Senior Centers.