

**CHAPTER 132****(HB 298)**

AN ACT relating to the protection of adults.

*Be it enacted by the General Assembly of the Commonwealth of Kentucky:*

Section 1. KRS 209.010 is amended to read as follows:

- (1) The purpose of this chapter is:
  - (a)~~(1)~~ 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)~~(2)~~ 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 subsection (4) of Section 2 of this Act.*

Section 2. KRS 209.020 is amended to read as follows:

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

- (1) "Secretary" means the secretary of the Cabinet for Families and Children;
- (2) "Cabinet" means the Cabinet for Families and Children;
- (3) "Department" means the Department for Community Based Services of the Cabinet for Families and Children;
- (4) "Adult" means~~;~~
  - (a)~~—~~ a person eighteen (18) years of age or older~~;~~ who, because of mental or physical dysfunctioning, is unable to manage his own resources, ~~or~~ 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~~;~~ ~~or~~
  - (b)~~—~~ A person without regard to age who is the victim of abuse and 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, 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* ~~or injury of an adult~~;
- (9)~~(8)~~ "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* ~~the improper use of an adult or an adult's resources by a caretaker or other person for the profit or advantage of the caretaker or other person~~;
- (10)~~(9)~~ "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)~~(10)~~ "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)~~(11)~~ "Emergency protective services" are protective services furnished an adult in an emergency;
- (13)~~(12)~~ "Protective placement" means the transfer of an adult from his present living arrangement to another;
- (14)~~(13)~~ "Court" means the Circuit Court or the District Court if no judge of that Circuit Court is present in the county;
- (15)~~(14)~~ ~~"Records" means~~~~Access to records" means that any representative of the Cabinet for Families and Children actively involved in the conduct of an abuse, neglect, or exploitation investigation under this chapter shall be allowed access to~~ the medical, mental, health, and financial 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 this chapter. ~~These records shall not be disclosed for any purpose other than the purpose for which they have been obtained;~~~~and~~
- (16)~~(15)~~ "Neglect" means a situation in which an adult is unable to perform or obtain for himself the *goods or services that* ~~which~~ are necessary to maintain his health or welfare, or the deprivation of services by a caretaker *that* ~~which~~ are necessary to maintain the health and welfare of an adult; ~~and~~ ~~or a situation in which a person deprives his spouse of reasonable services to maintain health and welfare~~
- (17) "Authorized agency" means:
- (a) *The Cabinet for Health Services and the Cabinet for Families and Children;*
  - (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.*

Section 3. KRS 209.030 is amended to read as follows:

- (1) The secretary may *promulgate administrative regulations in accordance with KRS Chapter 13A* ~~within his discretion, adopt such rules, regulations, procedures, guidelines, or any other expressions of policy necessary~~ to effect the *purposes* ~~purpose~~ of this chapter ~~insofar as such action is reasonably calculated to serve the public interest. The secretary may take necessary action and may offer or cause to be offered protective services toward 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, 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 ~~the occurrence 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)(4)~~ Upon receipt of the report, the cabinet shall *conduct an initial assessment and* take the following action~~s~~ ~~as soon as practical~~:
- (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)(e)~~ 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)(5)~~ 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 ~~individual,~~ 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)(6)~~ 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* ~~issue~~ 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)(7)~~ 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)~~(8)~~ 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.*

SECTION 4. A NEW SECTION OF KRS CHAPTER 209 IS CREATED TO READ AS FOLLOWS:

*The Cabinet for Families and Children shall provide for sufficient social worker staff to implement the provisions of this chapter. This staff shall obtain the training provided under Section 18 of this Act.*

Section 5. KRS 209.110 is amended to read as follows:

- (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.

Section 6. KRS 209.130 is amended to read as follows:

- (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.

SECTION 7. A NEW SECTION OF KRS CHAPTER 209 IS CREATED TO READ AS FOLLOWS:

- (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.*

Section 8. KRS 209.990 is amended to read as follows:

- (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~~[caretaker]~~ who knowingly abuses or neglects an adult is guilty of a Class C felony.
- (3) Any person~~[caretaker]~~ who wantonly abuses or neglects an adult is guilty of a Class D felony.
- (4) Any person~~[caretaker]~~ who recklessly abuses or neglects an adult is guilty of a Class A misdemeanor.

- (5) Any person~~[caretaker]~~ 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~~[caretaker]~~ 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~~[caretaker]~~ 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.
- ~~[(8) Any person who knowingly and willfully financially exploits an adult within the meaning of this chapter is guilty of a Class C felony.]~~

SECTION 9. A NEW SECTION OF KRS CHAPTER 209 IS CREATED TO READ AS FOLLOWS:

*The Attorney General, in consultation with legal, victims 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.*

SECTION 10. A NEW SECTION OF KRS CHAPTER 15 IS CREATED TO READ AS FOLLOWS:

- (1) *The Prosecutors Advisory Council shall develop in conjunction with the Cabinet for Families and Children, educational programs on the investigation and prosecution of abuse, neglect, and exploitation of the elderly and other crimes against the elderly.*
- (2) *A program not less than four (4) hours in length shall be made available to each Commonwealth's attorney, county attorney, assistant Commonwealth's attorney, assistant county attorney, Commonwealth's detective, and county detective within six (6) months of the person's initial taking of office or beginning of employment. Successful completion of the program shall be required for each officer specified, except for the elected Commonwealth's attorney and county attorney. The program shall also include the use of a multidisciplinary team in the investigation of crimes specified in subsection (1) of this section.*
- (3) *Each assistant Commonwealth's attorney, assistant county attorney, Commonwealth's detective, and county detective shall successfully complete a two (2) hour update on the subjects specified in subsection (1) of this section at least once every five (5) years.*

SECTION 11. A NEW SECTION OF KRS CHAPTER 15 IS CREATED TO READ AS FOLLOWS:

- (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;*
  - (b) *The dynamics of domestic violence, child physical and sexual abuse, and rape; child development; the effects of abuse and crime on adult and child victims, including the impact of abuse and violence on child development; legal remedies for protection; lethality and risk issues; profiles of offenders and offender treatment; model protocols for addressing domestic violence, rape, and child abuse; available community resources and victim services; and reporting requirements. This training shall be developed in consultation with legal, victim services, victim advocacy, and mental health professionals with expertise in domestic violence, child abuse, and rape;*
  - (c) *Human immunodeficiency virus infection and acquired immunodeficiency virus syndrome; and*
  - (d) *Identification and investigation of, responding to, and reporting bias-related crime, victimization, or intimidation that is a result of or reasonably related to race, color, religion, sex, or national origin.*
- (2) *The council shall develop and approve mandatory professional development training courses to be presented to all certified peace officers. A mandatory professional development training course shall be first taken by a certified peace officer in the training year following its approval by the council and biennially thereafter. A certified peace officer shall be required to take these courses no more than two (2) times in eight (8) years.*

- (3) *The council shall promulgate administrative regulations in accordance with KRS Chapter 13A to establish mandatory basic training and professional development training courses.*
- (4) *The council shall make an annual report by December 31 each year to the Legislative Research Commission that details the subjects and content of mandatory professional development training courses established during the past year and the subjects under consideration for future mandatory training.*

Section 12. KRS 15.760 is amended to read as follows:

- (1) Each Commonwealth's attorney shall, during the calendar year 1977 and through June 30, 1978, be entitled to at least the number of assistant Commonwealth's attorney positions, stenographic, secretarial, and clerical staff positions, and investigative and other personnel positions, which he had or was entitled to at the number and salary level in effect on December 1, 1976.
- (2) The number of assistant Commonwealth's attorney positions, stenographic, secretarial, and clerical staff positions, and investigative and other personnel positions, shall be based on real need to be determined with the advice and consent of the Prosecutors Advisory Council.
- (3) All assistant Commonwealth's attorneys shall be licensed practicing attorneys. The full-time assistant Commonwealth's attorneys shall not be allowed to engage in the private practice of law.
- (4) All salaries paid to personnel appointed hereunder shall be paid from the State Treasury. The salaries shall be commensurate with the appointee's education, experience, training, and responsibility, and be based upon the guidelines established by the Prosecutors Advisory Council, which guidelines shall be comparable with the classification and compensation plan for comparable positions maintained by the state Personnel Cabinet, pursuant to KRS 64.640.
- (5) The fiscal court, consolidated local government, or urban-county government in the county or counties that comprise the judicial circuit shall be responsible for providing the office of the Commonwealth's attorney with an adequate grand jury room and witness rooms.
- (6)
  - (a) Each Commonwealth's attorney shall be authorized to employ individually or jointly with one (1) or more other Commonwealth's attorneys at least one (1) victim advocate to counsel and assist crime victims as defined in KRS 421.500.
  - (b) An individual employed as a victim advocate shall be a person who by a combination of education, professional qualification, training, and experience is qualified to perform the duties of this position. The victim advocate shall be an individual at least eighteen (18) years of age, of good moral character, with at least two (2) years of experience working in the human services field or court system in a position requiring professional contact with children or adults, who has:
    1. Received a baccalaureate degree in social work, sociology, psychology, guidance and counseling, education, religion, criminal justice, or other human service field; or
    2. Received a high school diploma or equivalency certificate, and, in addition to the experience required in this subsection, has at least four (4) years' experience working in the human services field or court system.
  - (c) Each Commonwealth's attorney who employs an individual to serve as a victim advocate shall develop a written job description which describes the duties of the position and shall ensure the victim advocate completes training relating to the appropriate intervention with crime victims, including victims of domestic violence *and victims of elder abuse, neglect, or exploitation or other crimes against the elderly*. Each victim advocate shall perform those duties necessary to insure compliance with the crime victim's bill of rights contained in KRS 421.500 to 421.530. No victim advocate shall engage in political activities while in the course of performing his duties as victim advocate or the practice of law as defined in KRS 524.130. The creation and funding of any new personnel position shall be reviewed and approved by the Prosecutors Advisory Council.

Section 13. KRS 15A.190 is amended to read as follows:

- (1) The Justice Cabinet in consultation with the Cabinet for Families and Children, the Kentucky Commission on Women, and any other agency concerned with particular acts of criminal activity, shall design, print, and distribute to all law enforcement agencies in the Commonwealth, a uniform reporting form which provides statistical information relating to the crimes involving domestic violence, child abuse, victimization of the elderly, *including but not limited to elder abuse, neglect, and exploitation and other crimes against the*

*elderly*, or any other particular area of criminal activity deemed by the secretary of justice to require research as to its frequency.

- (2) The provision of subsection (1) of this section concerning the distribution of forms shall become effective on January 1, 2006~~{1979}~~.

SECTION 14. A NEW SECTION OF KRS CHAPTER 21A IS CREATED TO READ AS FOLLOWS:

*The Administrative Office of the Courts, under the direction of the Supreme Court, shall develop training for Circuit Judges, District Judges, and domestic relations and trial commissioners on investigation and prosecution of cases of adult abuse, neglect, and exploitation and on the investigation and services provided under KRS Chapter 209. This multidisciplinary training shall specify the roles and responsibilities of Circuit Judges, District Judges, and domestic relations and trial commissioners, and employees in their respective offices, with respect to the investigations and prosecutions of these cases.*

Section 15. KRS 21A.170 is amended to read as follows:

The Supreme Court shall provide, at least once every two (2) years, in-service training programs for Circuit Judges, District Judges, and domestic relations and trial commissioners in:

- (1) Child development, the dynamics of physical and sexual abuse, the impact of violence on child development, the treatment of offenders, and related issues; and
- (2) Dynamics of domestic violence, effects of domestic violence on adult and child victims, legal remedies for protection, lethality and risk issues, model protocols for addressing domestic violence, available community resources and victims services, and reporting requirements; *and*
- (3) *Dynamics of crimes against the elderly, including but not limited to elder abuse, neglect, and exploitation; the effects of these crimes on the elderly, institutions in which they may reside, and their families; legal remedies for protection; lethality and risk issues; financial implications; model protocols for addressing elder abuse, neglect, and exploitation and other crimes against the elderly; available community resources and victims services; and reporting requirements.*

Each Circuit Judge, District Judge, and trial and domestic relations commissioner shall successfully complete the training prescribed by the Supreme Court by rule.

Section 16. KRS 69.350 is amended to read as follows:

- (1) Each county attorney may employ individually or jointly with one (1) or more other county attorneys at least one (1) victim advocate to counsel and assist crime victims as defined in KRS 421.500.
- (2) An individual employed as a victim advocate shall be a person who by a combination of education, professional qualification, training, and experience is qualified to perform the duties of this position. The victim advocate shall be an individual at least eighteen (18) years of age, of good moral character, with at least two (2) years of experience working in the human services field or court system in a position requiring professional contact with children or adults, who has:
  - (a) Received a baccalaureate degree in social work, sociology, psychology, guidance and counseling, education, religion, criminal justice, or other human service field; or
  - (b) Received a high school diploma or equivalency certificate, and, in addition to the experience required in this subsection, has at least four (4) years' experience working in the human services field or court system.
- (3) Each county attorney who employs an individual to serve as a victim advocate shall develop a written job description which describes the duties of the position and shall ensure the victim advocate completes training relating to the appropriate intervention with crime victims, including victims of domestic violence *and elder abuse, neglect, and exploitation and other crimes against the elderly*. Each victim advocate shall perform those duties necessary to insure compliance with the crime victim's bill of rights contained in KRS 421.500 to 421.530. No victim advocate shall engage in political activities while in the course of performing duties as victim advocate or the practice of law as defined in KRS 524.130. The creation and funding of any new personnel position shall be reviewed and approved by the Prosecutors Advisory Council.

Section 17. KRS 194A.540 is amended to read as follows:



- (1) The secretary for health services shall, in consultation with the applicable licensure ~~boards~~<sup>board</sup>, develop *elder abuse, neglect, and exploitation-related* and domestic violence-related training courses that are appropriate for the following professions:
  - (a) Mental health professionals licensed or certified under KRS Chapters 309, 319, and 335;
  - (b) Alcohol and drug counselors certified under KRS Chapter 309;
  - (c) Physicians who practice primary care, as defined in KRS 164.925, or who meet the definition of a psychiatrist under KRS 202A.011, and who are licensed under KRS Chapter 311;
  - (d) Nurses licensed under KRS Chapter 314;
  - (e) Paramedics certified under KRS Chapter 311;
  - (f) Emergency medical technicians certified under KRS Chapter 211; and
  - (g) Coroners as defined in KRS 72.405 and medical examiners as defined in KRS 72.240.
- (2) The courses shall include the dynamics of domestic violence *and elder abuse, neglect, and exploitation*, effects of domestic violence *and elder abuse, neglect, and exploitation* on adult and child victims, legal remedies for protection, lethality and risk issues, model protocols for addressing domestic violence *and elder abuse, neglect, and exploitation*, available community resources and victim services, and reporting requirements. The training shall be developed in consultation with legal, victim services, victim advocacy, and mental health professionals with an expertise in domestic violence *and elder abuse, neglect, and exploitation*.
- (3) Any health-care or mental health professional identified in subsection (1) of this section shall successfully complete a three (3) hour training course that meets the requirements of subsection (2) of this section. Health care or mental health professionals identified in subsection (1) of this section who are granted licensure or certification after July 15, 1996, shall successfully complete the training within three (3) years of the date of initial licensure or certification.

Section 18. KRS 194B.530 is amended to read as follows:

- (1) The secretary for families and children shall develop an initial training course and continuing education courses for employees of the Department for Community Based Services concerning the dynamics of domestic violence *and elder abuse, neglect, and exploitation*, effects of domestic violence *and elder abuse, neglect, and exploitation* on adult and child victims, legal remedies for protection, lethality and risk issues, model protocols for addressing domestic violence, available community resources and victim services, and reporting requirements. The training shall be developed in consultation with legal, victim services, victim advocacy, and mental health professionals with an expertise in domestic violence.
- (2) Each person employed by the Department for Community Based Services who provides supervisory or direct service at the local, district, or state level shall successfully complete the initial training course and, at least once every two (2) years, the continuing education course developed under subsection (1) of this section.

SECTION 19. A NEW SECTION OF KRS CHAPTER 209 IS CREATED TO READ AS FOLLOWS:

*Educational and training courses and materials required under Sections 12, 15, 16, 17, and 18 of this Act 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.*

SECTION 20. KRS CHAPTER 209A IS ESTABLISHED AND A NEW SECTION THEREOF IS CREATED TO READ AS FOLLOWS:

*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.*

SECTION 21. A NEW SECTION OF KRS CHAPTER 209A IS CREATED TO READ AS FOLLOWS:

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

- (1) "Secretary" means the secretary of the Cabinet for Families and Children;
- (2) "Cabinet" means the Cabinet for Families and Children;

- (3) *"Department" means the Department for Community Based Services of the Cabinet for Families and Children;*
- (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 subsection (5) of Section 3 of this Act; and*
- (9) *"Neglect" means a situation in which a person deprives his spouse of reasonable services to maintain health and welfare.*
- (10) *"Authorized agency" means:*
  - (a) *The Cabinet for Health Services and the Cabinet for Families and Children;*
  - (b) *A local law enforcement agency or the Kentucky State Police; or*
  - (c) *The office of a Commonwealth's attorney or county attorney.*

SECTION 22. A NEW SECTION OF KRS CHAPTER 209A IS CREATED TO READ AS FOLLOWS:

- (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.*
  - (8) *Any representative of the cabinet may with consent of the adult enter any private premises where any adult alleged to be abused or neglected is found in order to investigate the need for protective services for the purpose of carrying out the provisions of this chapter.*
  - (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, no other person shall interfere with the cabinet when rendering such services.*
  - (11) *Anyone knowingly or wantonly violating the provisions of subsection (2) of this section shall be guilty of a Class B misdemeanor and penalized in accordance with KRS 532.090. Each violation shall constitute a separate offense.*

SECTION 23. A NEW SECTION OF KRS CHAPTER 209A IS CREATED TO READ AS FOLLOWS:

*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.*

SECTION 24. A NEW SECTION OF KRS CHAPTER 209A IS CREATED TO READ AS FOLLOWS:

*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.*

SECTION 25. A NEW SECTION OF KRS CHAPTER 209A IS CREATED TO READ AS FOLLOWS:

*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.*

SECTION 26. A NEW SECTION OF KRS CHAPTER 209A IS CREATED TO READ AS FOLLOWS:

*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.*

SECTION 27. A NEW SECTION OF KRS CHAPTER 209A IS CREATED TO READ AS FOLLOWS:

*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.*

Section 28. KRS 209.160 is amended to read as follows:

- (1) There is hereby created a trust and agency account in the State Treasury to be known as the *domestic violence*~~[spouse abuse]~~ 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 Revenue Cabinet. The Cabinet for Families and Children shall use the funds for the purpose of providing protective shelter services for *domestic violence*~~[spouse abuse]~~ victims.
- (2) *The Cabinet for Families and Children 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.*

Section 29. KRS 209.005 is amended to read as follows:

- (1) The Cabinet for Families and Children 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~~[state]~~ agency representatives *that include, but are not limited to*~~[from the following list]:~~
  - (a) The Department for Community Based Services;
  - (b) The Department for Public Health;
  - (c) The Department for Mental Health and Mental Retardation;
  - (d) The Office of Aging Services;
  - (e) The Division of Long Term Care;
  - (f) The Office of the Ombudsman;~~[and]~~
  - (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 subsection (12) of Section 3 of this Act;*
  - (c) Explore the need for a comprehensive statewide resource directory of services for the elderly;
  - ~~(d)~~~~(b)~~ Enhance existing public awareness campaigns for elder abuse and neglect; and
  - ~~(e)~~~~(c)~~ 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.

Section 30. KRS 61.300 is amended to read as follows:

No person shall serve as a deputy sheriff, deputy constable, patrol or other nonelective peace officer, or deputy peace officer, unless:

- (1) He is a citizen of the United States and is twenty-one (21) years of age or over;
- (2) If a deputy constable, he has resided in the county wherein he is appointed to serve for a period of at least two (2) years;
- (3) If a deputy sheriff, he shall be a resident of the Commonwealth of Kentucky. A sheriff may require his or her deputies to reside in the county in which they serve. Any deputy sheriff appointed pursuant to this section who has not been a resident of the county in which he serves for a period of at least two (2) years shall not be an active participant in any labor dispute and shall immediately forfeit his position if he violates this provision;
- (4) He has never been convicted of a crime involving moral turpitude;
- (5) He has not within a period of two (2) years hired himself out, performed any service, or received any compensation from any private source for acting, as a privately paid detective, policeman, guard, peace officer, or otherwise as an active participant in any labor dispute, or conducted the business of a private detective agency or of any agency supplying private detectives, private policemen, or private guards, or advertised or solicited any such business in connection with any labor dispute; and
- (6) He has complied with the provisions of *Section 11 of this Act* ~~[KRS 15.333]~~.

Section 31. KRS 431.005 is amended to read as follows:

- (1) A peace officer may make an arrest:
  - (a) In obedience to a warrant; or
  - (b) Without a warrant when a felony is committed in his presence; or
  - (c) Without a warrant when he has probable cause to believe that the person being arrested has committed a felony; or
  - (d) Without a warrant when a misdemeanor, as defined in KRS 431.060, has been committed in his presence; or
  - (e) Without a warrant when a violation of KRS 189.290, 189.393, 189.520, 189.580, 511.080, or 525.070 has been committed in his presence, except that a violation of KRS 189A.010 or KRS 281A.210 need not be committed in his presence in order to make an arrest without a warrant if the officer has probable cause to believe that the person has violated KRS 189A.010 or KRS 281A.210.
- (2)
  - (a) Any peace officer may arrest a person without warrant when the peace officer has probable cause to believe that the person has intentionally or wantonly caused physical injury to a family member or member of an unmarried couple.
  - (b) For the purposes of this subsection, the term "family member" means a spouse, including a former spouse, a parent, a grandparent, a child, a stepchild, or any other person related by consanguinity or affinity within the second degree.
  - (c) For the purpose of this subsection, the term "member of an unmarried couple" means each member of an unmarried couple which allegedly has a child in common, any children of that couple, or a member of an unmarried couple who are living together or have formerly lived together.
- (3) For purposes of subsection (2) of this section, a "peace officer" is:
  - (a) A full-time sworn officer of the Kentucky State Police, a full-time sworn officer of the Kentucky Horse Park, a commissioned full-time state park ranger, a full-time officer of the Division of Law Enforcement within the Department of Fish and Wildlife Resources who is exercising authority under KRS Chapter 235, a full-time city policeman, a full-time county policeman, a full-time university safety and security officer appointed pursuant to KRS 164.950 to 164.970, a full-time city-county policeman, a duly elected sheriff, or a full-time paid deputy sheriff; or

- (b) A part-time paid law enforcement officer, or a special paid deputy, who has completed a Kentucky law enforcement council approved education and training program referred to in *Section 11 of this Act* ~~[KRS 403.784]~~.
  - (c) The provisions of this section relating to training shall not apply to a deputy sheriff who is subject to the training requirements specified in KRS 70.263(3).
- (4) If a law enforcement officer has probable cause to believe that a person has violated a condition of release imposed in accordance with KRS 431.064 and verifies that the alleged violator has notice of the conditions, the officer shall, without a warrant, arrest the alleged violator whether the violation was committed in or outside the presence of the officer.
  - (5) A private person may make an arrest when a felony has been committed in fact and he has probable cause to believe that the person being arrested has committed it.
  - (6) If a law enforcement officer has probable cause to believe that a person has violated a restraining order issued under KRS 508.155, then the officer shall, without a warrant, arrest the alleged violator whether the violation was committed in or outside the presence of the officer.

Section 32. The following KRS sections are repealed:

- 15.331 Basic law enforcement training to include training on bias-related crime.
- 15.333 Educational program concerning HIV and AIDS for law enforcement officers.
- 403.784 Training and continuing education courses for law enforcement officers.

**Approved March 18, 2005.**