

# A County Attorney's View of 235B

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- Overview of Prosecution Model
- Overview of Service Model
- Civil remedies contained in 235B
- Shortfalls in enacting provisions of 235B
- Continued (critical) need for an Office of Substitute Decision Maker

# Who are the Players?

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- Community at Large
- Department of Human Services
- County Attorney's Office
- Law Enforcement
- Community Providers

# County Attorney's Relationship to DHS

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- Receives information on reports of suspected abuse-both criminal activity and otherwise
- Shares information and assists in evaluation of reported cases
- Suggested participation on MDT team
- Investigates/Prosecutes criminal charges
- Prepares all District Court paperwork
- Appears for the State/DHS in all District Court proceedings

# Shall Means Mandatory

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- Following the reporting of suspected dependent adult abuse, the department of human services or an agency approved by the department shall complete an assessment of necessary services and shall make appropriate referrals for receipt of these services.  
235B.3(6)

# Shall Means Mandatory

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- The department shall inform the appropriate county attorneys of any reports of dependent adult abuse. If criminal, department shall report to law enforcement.
- County attorneys and law enforcement...shall cooperate and assist in the evaluation and shall ...take any other lawful action necessary or advisable for the protection of the dependent adult. 235B.3(9)

# Prosecution

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- Criminal offenses are primarily felonies with the exception of reckless w/injury (AG), no injury (SR) or financial exploitation of less than \$100 (SM)  
235B.20

# Prosecution Model

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- Dependent adult
- Caretaker
- Intentional or reckless acts or omissions
- Assault
- Sexual abuse
- Financial exploitation
- Neglect

# Prosecution Model Focus

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- Meet the definitions
- Review the evidence and file charge
- Separate caregiver and victim
- Develop case
- Consider appropriate penalties
- Enter into plea agreement or try the case
- Impact caregiver's future behavior

# Barriers to Prosecution

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- Case may be circumstantial due mental capacity of victim
- Family dynamics and concerns for privacy
- Potentially removes care giver with no alternate provider for victim services

# Services Model

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- Suspected Dependent Adult
- Self, caretaker or other
- The deprivation of the minimum food, shelter, clothing, supervision, physical or mental health care, and other care
- Intervention needed for safety

# Service Model Focus

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- Assessment for services
  - Referral to support services
  - Court action if necessary
  - Follow up
- Mental health
  - Fiscal Management
  - Home health
  - Housing services
  - Counseling
  - Transportation
  - Adult daycare
  - Respite
  - Legal
  - Advocacy

# Existing DHS Authority

## NO DISTRICT COURT INVOLVEMENT

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235B3(6)

- Make an assessment of adult's situation
- Make appropriate referrals
- Provide necessary protective services

# “Protective Services”

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- Not defined in 235B
- Support services defined as agency on aging, mental health, fiscal management, home health, housing, counseling, transportation, adult day care, respite, legal and advocacy
- Basically any service available in the community including residential placement

# The 1<sup>st</sup> Bump in the Road

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- DHS has never had funding for providing services – sliding fee or not
- Referral to community provider only option
- With no District Court involvement services can only go as far as available funding – capacity issues cannot be reached
- Capacity or willingness to consent to services becomes a controlling factor

# DHS and County Attorney

Only way to access District Court\*

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- County Attorney represents DHS in all aspects of District Court involvement
- Requires CA to draft petition with DHS providing supporting affidavits/reports/medical records
- Will include court hearing at some point
- Can address Caretaker Interference
- Can address Need for “Protective” Services
- Can address Need for Emergency Services
- \*Exception being county funded services

# Existing DHS Authority

## DISTRICT COURT REQUIRED

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- **Authorization to access/evaluate**
- Upon a showing of probable cause that a dependent adult has been abused, a court may authorize a person, also authorized by the department, to make an evaluation, to enter the residence of, and to examine the dependent adult. 235B.3(7)
- Upon a showing of probable cause that a dependent adult has been financially exploited, a court may authorize a person, also authorized by the department, to make an evaluation, and to gain access to the financial records of the dependent adult. 235B.3(7)

# Caretaker Interference

## 235B.17

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- If a caretaker of a dependent adult, who consents to the receipt of protective services, refuses to allow provision of the services, the department may petition the court for an order enjoining the caretaker from interfering with the provision of services.

# Court Ordered Services

## 235B.18

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- If the department reasonably determines that a dependent adult is a victim of dependent adult abuse and lacks capacity to consent to the receipt of protective services, the department may petition the court for an order authorizing the provision of protective services.

# 60 Day Advocate

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- Judge may designate a person to be responsible for performing or obtaining protective services on behalf of the dependent adult
- Within sixty (up to 120) days of the appointment of such a person the court shall conduct a review to determine if a petition shall be initiated in accordance with section 633.552 (guardianship) for good cause shown.

# The 2nd Bump in the Road

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- Who can serve in this role?
- DHS can't – it is their petition
- Service provider can't – conflict of interest
- Money to pay for services still an issue
- Most persons concerned with “legal liability” of being named
- Best case scenario is to force reluctant family member

# Emergency Orders

## 235B.19

- If the department determines that a dependent adult is suffering from dependent adult abuse which presents an immediate danger to the health or safety of the dependent adult or which results in irreparable harm to the physical or financial resources or property of the dependent adult, and that the dependent adult lacks capacity to consent to receive protective services, and that no consent can be obtained, the department may petition the court with probate jurisdiction in the county in which the dependent adult resides for an emergency order authorizing protective services.

# Emergency Orders

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- Removal to safe surroundings
- Provision of medical services
- Other safety measures
- Suspend powers of acting guardian/conservator
- Appoint temporary guardian/conservator
- Enjoin 3<sup>rd</sup> party conduct

# 3<sup>rd</sup> Party Conduct

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- Removing the dependent adult
- Committing further abuse
- Contacting dependent adult
- Selling, removing or disposing of property
- Withdrawing funds
- Cashing any checks, etc.
- Selling or encumbering real property
- Exercising any powers on behalf of adult
- Any other acts that would cause harm

# The 3<sup>rd</sup> Bump in the Road

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- Simply no person or entity to serve as:
- Temporary guardian/conservators under 235B.19
- Non profit corporations under 633.63
- Guardians and conservators under 633.552 and 633.566

# Quick Look at MDT Team Assistance

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- Local or Regional
- Assess needs
- Formulate and monitor treatment plan
- Coordinate services
- Expertise in:
  - Medicine
  - Mental health
  - Social work
  - Legal issues
  - Law enforcement
  - Community based services
  - Funding streams

# Substitute Decision Maker 231E

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- Became law in 2005
- Never funded until 2007
- Funding pulled in 2009
- Supposed to be state wide by 2015

# 231E Highlights

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- Guardian, conservator, representative payee, attorney in fact under power of attorney, personal representative, executor
- Court may appoint on own motion or upon petition of any person

# So, What Happened?

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- Got caught up in rule making
- Failed to establish a local office pilot project
- No real interface with existing MDT teams and local service networks
- Failed to produce a result that appealed to legislators

# Observation:

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It appears to me that there is adequate language in the Code to provide significant protections for dependent and at risk persons in the State of Iowa.

That we continue to lack the necessary means to act on the protections that are already part of the law goes to our legislative and departmental priorities.

To revive the concept of a public guardian and provide service dollars at the local level is our best hope.