



Legal Issues Related to Elder Abuse

A Desk Guide for Law Enforcement

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How to Use this Desk Guide

“My colleagues and I need to know that when we’re told ‘I could spend dad’s money because I have his power of attorney’ we shouldn’t just say ‘Oh, OK’ and walk out.”

--Dale Gillette, Lt. (ret.)

Ross County, Ohio Sheriff’s Office and TRIAD Coordinator
Pickaway County, Ohio Sheriff’s Office

Informed justice system professionals can recognize elder abuse and adequately assess legal issues. Those professionals can play a key role in stopping elder abuse; protecting victims by linking them to system-based victim services, adult protective services, or other critical services; protecting society; and holding perpetrators accountable.

To help justice system professionals fulfill these very important roles, this national desk guide provides general, relatively brief explanations of:

- Legal concepts, documents, and tools that may be misused to commit elder abuse or used properly to remedy it.
- Issues and actions that justice system professionals should consider if they suspect that elder abuse has occurred.

The guide provides:

- Background information about:
 - types of elder abuse
 - abusers
 - risk factors
 - adult protective services
 - mandatory reporting
 - consent, decision-making capacity, and undue influence
 - considerations for community corrections officers
- Explanations of legal documents and tools that may be misused, resulting in abuse, neglect, or exploitation of an older person, and of other especially relevant legal concepts including:
 - deeds and life estates
 - guardians/conservators

- health care advance directives
- joint owners/joint accounts
- Medicaid planning
- powers of attorney
- nursing homes and assisted living
- representative payees and VA fiduciaries
- trusts
- reverse mortgages
- wills
- Resource information, including:
 - a list of entities that may be involved with elder abuse victims or perpetrators
 - a list of selected federal and national websites and resources
 - the differences between civil and criminal courts
 - tips on communicating with older individuals

This desk guide supplements *Legal Issues Related to Elder Abuse: A Pocket Guide for Law Enforcement* (American Bar Association Commission on Law and Aging, 2014). For more information about obtaining the pocket guide, visit www.ambar.org/ElderAbuseGuides. The desk guide provides more information about the legal documents and tools, as well as more resource information. It can be used as a reference tool and also may be helpful to professionals who train their peers and colleagues.

The order of the desk guide mirrors that of the pocket guide (up until the last four sections that provide resource information) to facilitate cross-referencing between the two publications. In the pocket guide, topics were not presented alphabetically because it was formatted to minimize the number of pages while maximizing the visibility and usefulness of the topic tabs.

Some terms or points are emphasized by a **bold** font. Many of the legal concepts, documents, and tools are cross-referenced in other sections of this guide. Terms in *italics* indicate that there is a section about that topic.

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Types of Elder Abuse

Elder abuse is often used as a general term that includes physical, sexual, and psychological abuse; neglect; and financial exploitation. Elder abuse harms millions of older people each year. Victims may face increased risk of death, physical or emotional injury, and financial ruin. Elder abuse costs society billions of dollars annually in lost income and assets and in health care, social services, and legal system expenses.

The Elder Justice Act, a federal law that was enacted in 2010 as part of the Patient Protection and Affordable Care Act, defines elder abuse, neglect, and exploitation as follows:

ABUSE.—The term ‘abuse’ means the knowing infliction of physical or psychological harm or the knowing deprivation of goods or services that are necessary to meet essential needs or to avoid physical or psychological harm.

NEGLECT.—The term ‘neglect’ means—

(A) the failure of a caregiver or fiduciary to provide the goods or services that are necessary to maintain the health or safety of an elder; or

(B) self-neglect.

EXPLOITATION.—The term ‘exploitation’ means the fraudulent or otherwise illegal, unauthorized, or improper act or process of an individual, including a caregiver or fiduciary, that uses the resources of an elder for monetary or personal benefit, profit, or gain, or that results in depriving an elder of rightful access to, or use of, benefits, resources, belongings, or assets.

State laws generally use different definitions, however, and there may be several laws in a state that define elder abuse. Every state has an *adult protective services (APS)* or elder protective services law (a few have both laws or one law with two systems – one for adults and one for elders, but generally we will use the term *APS* throughout this guide). Additionally, acts of elder abuse often violate one or more traditional criminal laws, such as murder, sexual assault, battery, or larceny. A growing number of states have enacted criminal laws that specifically define and provide penalties for elder abuse.

State *APS* laws often subdivide abuse, neglect, and exploitation even further. The National Center on Elder Abuse (NCEA) has developed a list of and definitions for seven types of elder abuse, based on a review of state *APS* laws in the 1990s.

The following pages reproduce the NCEA lists of seven major types of elder abuse, their general definitions, and possible indicators of each type. (The lists may be found online at www.ncea.aoa.gov/FAQ/Type_Abuse/index.aspx.) The author of the pocket and desk guides has made a few revisions shown in [brackets] to the lists of possible indicators, and also added a list of possible crimes for each type of elder abuse. These lists are just a starting point. There are other indicators for

each type of elder abuse. Also, state laws may define more or fewer types of elder abuse, use different definitions, and include other crimes that might be charged.

For information about the types and definitions of elder abuse in your state laws, visit your state's statutory database or contact your state's *APS* agency (see *Selected Resources on Elder Abuse*).

This pocket guide will use elder abuse in its general sense—to mean abuse, neglect, and exploitation—unless otherwise indicated.

Practitioners' experiences and recent research show that most elder abuse victims experience more than one type of abuse (**polyvictimization**). For example, perpetrators may use physical abuse or threaten *nursing home* placement to financially exploit the victim.

Type of Elder Abuse	Possible Indicators	Possible Crimes
<p>“Physical Abuse is defined as the use of physical force that may result in bodily injury, physical pain, or impairment. Physical abuse may include but is not limited to such acts of violence as striking (with or without an object), hitting, beating, pushing, shoving, shaking, slapping, kicking, pinching, and burning. In addition, inappropriate use of drugs and physical restraints, force-feeding, and physical punishment of any kind also are examples of physical abuse.”</p>	<p>“Signs and symptoms of physical abuse include but are not limited to:</p> <ul style="list-style-type: none"> • bruises, black eyes, welts, lacerations, and rope marks; • bone fractures, broken bones, and skull fractures; • open wounds, cuts, punctures, untreated injuries in various stages of healing; • sprains, dislocations, and internal injuries/bleeding; • broken eyeglasses/frames, physical signs of being subjected to punishment, and signs of being restrained; • laboratory findings of medication overdose or under-utilization of prescribed drugs; • an elder's report of being hit, slapped, kicked, or mistreated; • an elder's sudden change in behavior; and • the caregiver's refusal to allow visitors to see an elder alone.” 	<ul style="list-style-type: none"> • Assault • Aggravated assault • Attempted murder • Battery • Domestic violence • Elder abuse • Kidnapping • Manslaughter • Murder

Type of Elder Abuse	Possible Indicators	Possible Crimes
<p>“Sexual Abuse is defined as non-consensual sexual contact of any kind with an elderly person. Sexual contact with any person incapable of giving <i>consent</i> is also considered sexual abuse. It includes, but is not limited to, unwanted touching, all types of sexual assault or battery, such as rape, sodomy, coerced nudity, and [the taking of] sexually explicit photo[s or videos].”</p>	<p>“Signs and symptoms of sexual abuse include but are not limited to:</p> <ul style="list-style-type: none"> • bruises around the breasts or genital area; • unexplained venereal disease or genital infections; • unexplained vaginal or anal bleeding; • torn, stained, or bloody underclothing; and • an elder's report of [improper touching or of] being sexually assaulted or raped.” 	<ul style="list-style-type: none"> • Assault • Aggravated assault • Battery • Domestic violence • Elder abuse • Rape • Sexual assault • Sexual battery • Trafficking

Type of Elder Abuse	Possible Indicators	Possible Crimes
<p>“Emotional or Psychological Abuse is defined as the infliction of anguish, pain, or distress through verbal or nonverbal acts. Emotional/psychological abuse includes but is not limited to verbal assaults, insults, threats, intimidation, humiliation, and harassment. In addition, treating an older person like an infant; isolating an elderly person from his/her family, friends, or regular activities; giving an older person the ‘silent treatment’; and enforced social isolation are examples of emotional/psychological abuse.”</p>	<p>“Signs and symptoms of emotional/psychological abuse include but are not limited to:</p> <ul style="list-style-type: none"> • being emotionally upset or agitated; • being extremely withdrawn and non-communicative or non-responsive; • unusual behavior usually attributed to dementia (e.g., sucking, biting, rocking); and • an elder's report of being verbally or emotionally mistreated.” 	<ul style="list-style-type: none"> • Elder abuse • Harassment • Hate crimes

Type of Elder Abuse	Possible Indicators	Possible Crimes
<p>“Abandonment is defined as the desertion of an elderly person by an individual who has assumed responsibility for providing care for an elder, or by a person with physical custody of an elder.”</p>	<p>“Signs and symptoms of abandonment include but are not limited to:</p> <ul style="list-style-type: none"> • the desertion of an elder at a hospital, a nursing facility, or other similar institution; • the desertion of an elder at a shopping center or other public location; and • an elder's own report of being abandoned.” 	<ul style="list-style-type: none"> • Elder abuse • Manslaughter • Murder • Neglect • Negligent or involuntary homicide

Type of Elder Abuse	Possible Indicators	Possible Crimes
<p>“Neglect is defined as the refusal or failure to fulfill any part of a person's obligations or duties to an elder. Neglect may also include failure of a person who has fiduciary responsibilities to provide care for an elder (e.g., pay for necessary home care services) or the failure on the part of an in-home service provider to provide necessary care.”</p> <p>“Neglect typically means the refusal or failure to provide an elderly person with such life necessities as food, water, clothing, shelter, personal hygiene, medicine, comfort, personal safety, and other essentials included in an implied or agreed-upon responsibility to an elder.”</p>	<p>“Signs and symptoms of neglect include but are not limited to:</p> <ul style="list-style-type: none"> • dehydration, malnutrition, untreated bed sores, and poor personal hygiene; • unattended or untreated health problems; • hazardous or unsafe living condition/arrangements (e.g., improper wiring, [inappropriate temperatures], or no running water); • unsanitary and unclean living conditions (e.g., dirt, fleas, lice on person, soiled bedding, fecal/urine smell, inadequate clothing); and • an elder's report of being mistreated.” 	<ul style="list-style-type: none"> • Elder abuse • Manslaughter • Murder • Neglect

Type of Elder Abuse	Possible Indicators	Possible Crimes
<p>“Financial or Material Exploitation is defined as the illegal or improper use of an elder's funds, property, or assets. Examples include, but are not limited to, cashing an elderly person's checks without authorization or permission; forging an older person's signature; misusing or stealing an older person's money or possessions; coercing or deceiving an older person into signing any document (e.g., contracts or <i>will</i>); and the improper use of <i>conservatorship, guardianship, or power of attorney.</i>”</p>	<p>“Signs and symptoms of financial or material exploitation include but are not limited to:</p> <ul style="list-style-type: none"> • sudden changes in bank account or banking practice, including an unexplained withdrawal of large sums of money by a person accompanying the elder; • the inclusion of additional names on an elder's bank signature card; • unauthorized withdrawal of the elder's funds using the elder's ATM card; • abrupt changes in a <i>will</i> or other financial documents; • unexplained disappearance of funds or valuable possessions; • substandard care being provided or bills unpaid despite the availability of adequate financial resources; • discovery of an elder's signature being forged for financial transactions or for the titles of his/her possessions; • sudden appearance of previously uninvolved relatives claiming their rights to an elder's affairs and possessions; • unexplained sudden transfer of assets to a family member or someone outside the family; • the provision of services that are not necessary; and • an elder's report of financial exploitation.” 	<ul style="list-style-type: none"> • Elder abuse • Embezzlement • False instrument • Financial exploitation • Forgery • Fraud (e.g., credit card, tax, or Medicaid) • Identity theft • Larceny • Money laundering • Theft • Trafficking

Type of Elder Abuse	Possible Indicators	Possible Crimes
<p>“Self-neglect is characterized as the behavior of an elderly person that threatens his/her own health or safety. Self-neglect generally manifests itself in an older person as a refusal or failure to provide himself/herself with adequate food, water, clothing, shelter, personal hygiene, medication (when indicated), and safety precautions.”</p> <p>“The definition of self-neglect excludes a situation in which a mentally competent older person, who understands the consequences of his/her decisions, makes a conscious and voluntary decision to engage in acts that threaten his/her health or safety as a matter of personal choice.”</p>	<p>“Signs and symptoms of self-neglect include but are not limited to:</p> <ul style="list-style-type: none"> • dehydration, malnutrition, untreated or improperly attended medical conditions, and poor personal hygiene; • hazardous or unsafe living conditions/arrangements (e.g., improper wiring, no indoor plumbing, no heat, no running water, [hoarding]); • unsanitary or unclean living quarters (e.g., animal/insect infestation, no functioning toilet, fecal/urine smell); • inappropriate and/or inadequate clothing, lack of the necessary medical aids (e.g., eyeglasses, hearing aids, dentures); and • grossly inadequate housing or homelessness.” 	<p>Self-neglect is NOT a crime. However, it has two connections to the criminal justice system:</p> <ul style="list-style-type: none"> • Self-neglecting behaviors may be an indicator or result of some other type of abuse (e.g., financial exploitation may result in an older person not being able to afford food or utilities); and • An older person who is self-neglecting may come to the attention of the criminal justice system before coming to the attention of <i>adult protective services</i> because of criminal behavior (e.g., law enforcement may be asked to investigate allegations that a self-neglecter is abusing or neglecting a child or dependent adult, is committing animal abuse or neglect, or is violating municipal codes by hoarding animals or other things).

Abusers

Older persons may be abused, neglected, or exploited by:

- Family members, such as
 - Spouses or partners
 - Adult children
 - Grandchildren or great-grandchildren
 - Other relatives
- Caregivers
 - Paid, such as staff of home care agencies or *nursing homes*
 - Volunteers
- Fiduciaries, including
 - Agents under a *power of attorney*
 - Court-appointed *guardians or conservators*
 - Trustees of a *trust*
 - Other professionals who have an obligation to act in their clients' best interest, such as financial advisors, lawyers, and real estate agents
- Friends
- Neighbors

Individual state laws may define elder abuse in ways that include other categories of abusers. For example, a state's law also may define consumer scams or crimes committed by strangers as elder abuse.

Risk Factors

Risk factors are circumstances that seem related to elder abuse. Their existence does not mean that elder abuse is occurring, but their absence does not mean that it is not occurring. Justice system professionals should be aware of these risk factors, especially if indicators such as those listed in *Types of Elder Abuse* are observed.

- Risk factors for being a victim may include:
 - Dementia
 - Isolation, such as being homebound or homeless
 - Lack of social support, such as lack of family or friends nearby
 - Living with other people
 - Mental illness
 - Physical impairments
 - Substance abuse
- Risk factors for being a perpetrator may include:
 - Dependence of the perpetrator on the victim for financial or other forms of support
 - History of abuse, neglect, or exploitation
 - Living with the victim
 - Mental illness
 - Substance abuse

Adult Protective Services

State adult protective services (APS) agencies play a crucial role in detecting elder abuse and protecting victims. As a result, APS agencies are mentioned in each section of this guide. To avoid repetition, the role of APS agencies is explained in this stand-alone section.

APS agencies are responsible for receiving and investigating reports of suspected abuse, neglect, or exploitation. APS professionals, who are usually social workers, visit the subject of the report to determine if he or she is in need of protection and has *decision-making capacity* to accept or refuse protective services. If warranted, the APS agency will arrange or refer the victim to other services. Other services may include financial management, food delivery, health care, home repair or cleaning, housing (emergency or long-term), legal assistance, transportation, and victim assistance and compensation.

State law governs what *types of elder abuse* and what categories of victims an APS agency may investigate. Analysis of the state APS statutes demonstrates that they contain as many as seven threshold eligibility criteria. These criteria include:

- Age. Most states cover persons age 18 and over, while others cover persons age 60 and older or 65 and older. A few states have both an APS agency and an elder protective services agency.
- Condition. In some states, simply meeting the age criterion (for example, being 65 or older) makes an individual eligible for APS. In a majority of the states, however, an individual also must have some sort of condition, such as “mental or physical impairment,” “mental or physical illness,” “mental retardation,” “developmental disability,” “dementia,” or “substance abuse.”
- Function. In some states, a person must have an impaired ability to do certain things such as provide self-care; manage finances; protect oneself; obtain services; or make, communicate, or implement decisions.
- Lacks Assistance. A few states add the criterion that an individual have no able and willing person available to provide assistance.
- Living Situation. In some states, the setting in which a person lives (a house or apartment vs. a *nursing home* or *residential care facility* or some other type of institution) matters. For purposes of this guide, the key point is that in some states individuals in certain living situations (e.g., a *nursing home*) are not eligible for APS because some other agency is responsible for investigating allegations of abuse, neglect, or exploitation of those individuals.

- Receiving Services. A few states include the receipt of certain services as a criterion. Most statutes that contain this criterion also contain other criteria, such as age or function. In other words, receipt of these services alone is usually not sufficient to make a person eligible for APS.
- Has *Guardian or Conservator*. In some states, an individual is automatically eligible for APS if a court has ruled that the person lacks *decision-making capacity* and has appointed or will soon appoint a *guardian or conservator* for that person.

For information about the threshold eligibility criteria included in your state APS law, visit the state statutory database or contact the state APS agency (see *Selected Resources on Elder Abuse*).

In your state or community, the APS agency may be called something else. Additionally, a few states have separate programs for adult protective services and elder protective services. For more information on finding state or local APS agencies, see *Selected Resources on Elder Abuse*.

APS agencies refer cases to law enforcement if staff members believe that a crime has occurred.

APS professionals and records may be important sources of evidence.

Mandatory Reporting

Mandatory reporting describes the requirement contained in most state *adult protective services (APS)* laws that designated professionals or other individuals report suspected elder abuse to the *APS* agency. Failure to report is usually a crime.

Key Definitions and Facts

- In almost every state, the *APS* law mandates that certain professionals or other individuals report suspected elder abuse to the *APS* agency. Failure to report is usually a crime.
- State laws vary as to who is considered to be a mandatory reporter. The laws always include health care providers and sometimes include law enforcement officers. Some states require bankers and other fiduciaries to make reports. Some states require everyone to report suspected elder abuse.
- There are other state and federal laws requiring that reports be made to other agencies, but people in the elder abuse field are usually referring to *APS* laws when they talk about mandatory reporting.
- Some *APS* laws require that under certain circumstances a person making a report to *APS* also must file a report with law enforcement or other agencies.
- Some *APS* laws require the *APS* agency to inform other agencies, such as law enforcement or the agency that licenses and certifies *nursing homes*, about reports under certain circumstances.
- Most state *APS* laws provide immunity from criminal, civil, or administrative liability to persons who report or participate in activities stemming from a report—such as testifying in court—if the report was made in good faith or complied with some other standard in the law. Some state *APS* laws provide an exception to this good-faith immunity if the reporter perpetrated the elder abuse or conspired with the perpetrator.

Actions to Consider

- A mandatory reporter's failure to report suspected elder abuse may be a crime under state or federal law.
- Consider whether failure or delay in making a mandated report resulted in the victim suffering further harm, other victims experiencing elder abuse, or the perpetrator not being held accountable.

- Consider whether failure or delay in making a mandatory report allowed evidence to be lost, altered, or destroyed.
- Consider whether failure or delay in making a mandatory report is evidence of a cover up or conspiracy.
- Encourage the principal to seek legal assistance, per departmental policy.
 - Civil monetary damages may be appropriate if an elder abuse victim suffered additional harm because a mandated reporter did not report suspected elder abuse to *APS* or another agency.
- Make a report of suspected elder abuse to an employer and a licensing entity.
 - A mandatory reporter's failure to make a report may indicate a need for training.
 - A mandatory reporter's failure to make a report may be grounds for a fine, loss of license, or other disciplinary action by an employer or a licensing entity.
- Make a report to *APS* if you suspect elder abuse and the case was not referred to your agency by *APS*.

Consent, Decision-Making Capacity, and Undue Influence

The legal concepts of consent, decision-making capacity, or undue influence—or some combination of them—are a critical issue in many cases of elder abuse. As a result, these concepts are mentioned in every section of the guide and require a stand-alone explanation.

Lack of consent is an element of many crimes, such as sexual assault or theft. Adults may be unable to give valid consent because they do not have decision-making capacity or because they are victims of undue influence.

Consent: Key Definitions and Facts

- Consent, as used in the law, basically means a decision to do something or to allow something to happen. Examples of how the term is used include consenting to engage in sexual activity and giving informed consent to have a medical procedure.
- Consent may be given in writing, verbally, or through behavioral indicators such as nodding. The nature of the decision determines what method of demonstrating consent is necessary. For example, contracts or *deeds* must be in writing to be legally enforceable.
- Generally, consent has three elements (a state law may have a different number or articulate the elements differently). To give legally valid consent, a person must:
 - Have decision-making capacity,
 - Have knowledge of the true nature of an act, and
 - Act freely and voluntarily.
- Civil courts may undo legal transactions that were made by a person who could not provide consent. Reasons for the inability to provide consent may include lack of decision-making capacity or fraud and misrepresentations about the real circumstances of a transaction. The civil justice system does not use the term consent as often as the criminal justice system does—one example is informed consent for medical treatment—but the underlying concept is the same.
- In the criminal justice system, the failure to obtain legally valid consent may be an element of a crime (e.g., sexual assault, theft).

Decision-Making Capacity: Key Definitions and Facts

- Decision-making capacity means the cognitive ability to make a decision. **This guide often will use the term capacity as shorthand for decision-making capacity.**
- Sometimes state law or practitioners use the term **competence** or **competency** to mean the same thing as capacity (this guide does not use those terms).
- Capacity is both a legal concept and a medical concept. Lawyers and clinicians (such as physicians, psychiatrists, or psychologists) generally define it differently.
- Capacity is usually not black or white, all or nothing. It may fluctuate over time and even over the course of a day. For example, Alzheimer’s disease is progressive and a person who has it will gradually lose decision-making capacity over time. Persons with dementia (which includes Alzheimer’s disease) often have more capacity earlier in the day and less capacity later in the day; this is known as **sundowning** or **sundown syndrome**.
- Just because a person is old or has an illness or condition that affects cognitive abilities does not mean the person lacks capacity. For example, a person in the early to middle stages of Alzheimer’s disease or someone who has a developmental disability may have capacity to make some or all decisions.
- In addition to being affected by disease or disability, a person’s decision-making capacity may be affected by alcohol, drugs (legal and illegal), and nutrition.
- “Capacity to do what?” is a critical question. Under the law, there are different standards of capacity for different types of decisions. For example, the law requires a lower standard of capacity to make a gift or a *will* than it does to sign a contract. Complex decisions usually require a higher standard of decision-making capacity. But for decisions on financial matters, at the very least a person must understand the nature of the decision being made and the effect or potential effect of that decision.
- The law presumes that adults have capacity, unless a court decides differently and appoints a *guardian* or *conservator* to make decisions for the adult.

Undue Influence: Key Definitions and Facts

- Undue influence is a psychological and legal concept.
- Historically, undue influence has been a legal theory used to challenge the validity of a *will* or a *deed*. The recognition that undue influence may occur in some elder abuse cases is a recent development.
- Undue influence is not usually included in laws on elder abuse, and if it is included it is not usually defined. For example, while some *adult protective services (APS)* laws do include undue influence in their definition of financial exploitation, they do not define what undue influence is or how it occurs.

- Psychologist Margaret Singer defined undue influence as “when people use their role and power to exploit the trust, dependency, and fear of others. They use this power to deceptively gain control over the decision-making of the second person.” Professor Singer compared undue influence to the psychological techniques used to control prisoners of war or members of cults.
- State court decisions do define what undue influence is and how it occurs. Those definitions vary from state to state, but there are some common factors that the courts consider in deciding whether a *will* or *deed* was made as a result of undue influence. The courts may label or express these factors in different ways, but in general they look at:
 - The relationship between the alleged influencer and alleged victim.
Were they family? Was the alleged influencer providing care to the older person? Was the alleged influencer a **fiduciary** (e.g., an accountant, clergy member, financial or business advisor, or lawyer) who owed a special duty to the older person?
 - The alleged victim’s vulnerability to undue influence.
Was the older person experiencing illness, dementia or other cognitive impairment, grief, or sleep deprivation? Was the older person affected by medications?
 - The alleged influencer’s opportunity to gain control.
Was the older person isolated, either before the alleged influencer became involved in the elder’s life or as a result of actions by the alleged influencer? Were family members or friends prevented from seeing or talking to the older person (e.g., by being told that she was sleeping or feeling unwell each time they called)? Was the older person prevented from seeing family members, friends, neighbors, or others? Did the older person believe things that the alleged influencer denies (e.g., that they were or soon would be married)?
 - Whether the alleged victim’s decisions were the outcome of the undue influence.
Were decisions allegedly made as a result of the influencer’s control inconsistent with the older person’s decisions? Did the older person who suddenly made or changed legal documents have independent legal advice or did the alleged influencer choose the lawyer and sit in on all the meetings with the lawyer?
- A person who has decision-making capacity can be unduly influenced, but it is easier to commit undue influence on someone who has diminished capacity.
- Generally, a victim of undue influence will not recognize what is happening and will side with the perpetrator.
- Undue influence undermines consent. Even if the victim has capacity, a decision made as a result of undue influence is neither knowing nor voluntary. **Undue influence is a process by which control over the victim is gained and financial exploitation is committed.**

Relevance to Elder Abuse

- The legal concepts of consent, decision-making capacity, and undue influence—or some combination of them—are critical issues in many cases of elder abuse. These concepts are relevant in one or both of the following ways.
 - Present decisions. For example, can the alleged victim assist in an investigation, agree to or refuse to accept help from *APS*, or testify at trial?
 - Past decisions. To illustrate, did the alleged victim have the capacity to *deed* his property to his “new sweetheart”? Was the new *will* signed knowingly and voluntarily, or was it really the result of undue influence?
- If an alleged victim lacks capacity to make present decisions, then *APS* or family members may need to ask a court to appoint a *guardian* or a *conservator* or take other steps to protect the person from harm. Law enforcement and prosecutors may need to obtain, analyze, and use other forms of evidence instead of or in addition to the alleged victim’s testimony.
- An alleged victim’s capacity to make past decisions will be the central issue in many elder abuse cases. It is possible for skilled clinicians to retroactively assess capacity. If a person clearly lacked capacity, his or her consent cannot be legally valid. But a person who had sufficient capacity to make a decision (remember that there are different standards for different decisions and that capacity may fluctuate) cannot have given valid consent if the decision was not knowing and voluntary due to coercion, fraud, or undue influence.

Actions to Consider

- Consider whether the alleged victim had capacity to make the decisions in question.
- Determine whether the victim has had a capacity assessment or whether one is necessary. Skilled clinicians can retroactively assess capacity.
- The Mini-Mental Status Exam (MMSE or mini-mental) that is widely used by *APS* **does not** assess decision-making capacity.
 - Ideally, a capacity assessment should be conducted by a medical or mental health professional who understands how to conduct assessments, knows the pros and cons of existing assessment instruments, and has experience conducting assessments.
 - Do not limit an investigation to the issue of capacity. Consider whether the alleged victim’s decisions may have resulted from coercion, fraud, intimidation, misrepresentation, threats, or undue influence.
- Make a report to *APS*.

Considerations for Community Corrections Officers

Community corrections officials are pretrial, probation, or parole authorities who supervise defendants and/or offenders in the community. These officials may supervise defendants and offenders who have been charged with crimes relative to elder abuse, who reside with older persons, and who work with or in proximity to older persons. Therefore, these officials can play a vital role in detecting and preventing elder abuse.

Community corrections officials will be better able to recognize whether a defendant or offender is committing elder abuse if they read the remainder of this guide. However, they face some different issues than do other law enforcement officials regarding placement and supervision of offenders. Those issues are addressed in this stand-alone section, which supplements the related sections in this guide.

Consent, Decision-Making Capacity, and Undue Influence

- Consider whether it is appropriate for an offender to live or work with older persons who have diminished *decision-making capacity* or who are vulnerable to coercion, fraud, intimidation, misrepresentation, threats, or *undue influence*. Additional supervision may be warranted.

Nursing Homes and Assisted Living Facilities

- Consider whether it is lawful or appropriate for an offender to work in a *nursing home* or *residential care facility*. Assess whether the offender's past crimes indicate a propensity to commit crimes against facility residents.
- If an offender is working in a *long-term care facility*, assess whether additional or different supervision is necessary. Conduct some supervision in the facility, and be alert to signs of possible elder abuse. A state's law or an agency's policies may require that you notify some other agency if an offender is working in a certain type of facility.
- Consider whether it is lawful or appropriate for an offender to be placed as a resident in a *nursing home* or *residential care facility*. Also consider whether your state law or agency policy requires that the *long-term care facility's* management or another agency be notified.
- Determine whether your state's law requires community corrections officers to report suspected elder abuse by an offender to *adult protective services* or some other agency.

Deeds and Life Estates

For many older people, the largest asset they own is their home. That home may be taken through financial exploitation involving deeds or life estates.

Key Definitions and Facts

- A deed is a legal document that transfers the ownership of real estate to someone else. A deed may be used to add someone as a *joint owner* of the property. If there is a mortgage on the property, the deed does not affect the owner's obligation to pay the mortgage.
- There are different types of deeds. The type of deed seen most often in cases involving elder abuse is the **quitclaim** deed (often incorrectly called a quickclaim deed). Quitclaim deeds transfer some or all of an owner's interest in the property without making any legal guarantee that the interest was valid.
- Common reasons for making a quitclaim deed include:
 - Convenience/planning for the possible loss of *capacity*—for example, an older person may add an adult child's name to the deed so that the adult child can help with managing or selling the property if the older person needs such help.
 - Giving the real estate to someone else, such as a family member or a caregiver, possibly in exchange for something thought to be of value such as the provision of care and companionship.
 - Enabling property to be transferred after the older person's death without the costs and time of going through probate of a *will*.
- A life estate is created when an owner deeds real estate to someone else or adds another person's name to the deed but reserves the right to continue living on the property for the remainder of his or her life or until some other specified event occurs. It is possible to inherit a life estate in property from someone else. A person who inherits a life estate cannot sell or give away the property but only can use it for the remainder of his or her life.

Relevance to Elder Abuse

- Deeds may be misused to commit financial exploitation in numerous ways, including the following:
 - Someone who may benefit destroys a deed to prevent the owner from transferring property to someone else.
 - Someone steals the identity of the property owner and forges the deed.

- An owner who lacks appropriate *decision-making capacity* is coerced, induced, threatened, or tricked into signing a deed.
- An owner who has *capacity* signs a deed as a result of fraud, misrepresentation, or *undue influence*.
- A person who has a life estate in property also may be financially exploited through misuse of a deed. For example:
 - Someone who may benefit destroys a deed to eliminate evidence that the older person has a life estate in the property.
 - Someone steals the identity of the property owner and forges a deed giving up the life estate.
 - An owner who lacks appropriate *decision-making capacity* is coerced, induced, threatened, or tricked into signing a deed giving up the life estate.
 - An owner who has *capacity* signs a deed giving up the life estate as a result of fraud, misrepresentation, or *undue influence*.
- Problems may come to light before or after the older person dies. There may be multiple victims:
 - the older person whose property may have been stolen or whose estate plans may have been altered,
 - other *joint owners*, or
 - the person(s) to whom the owner ultimately intended to give the property or proceeds from the future sale of the property.

Actions to Consider

- The circumstances surrounding the preparation, signing, or destruction of a deed may constitute a local, state, or federal crime relative to:
 - Conspiracy
 - Elder abuse
 - False instrument
 - Financial exploitation
 - Forgery
 - Fraud
 - Identity theft
 - Larceny

- Theft
- Consider whether there are other victims, such as *joint owners* whose interests were harmed.
- Consider whether the alleged perpetrator in a position (e.g., a caregiver, *guardian/conservator*, or lawyer) to victimize other older people.
- If the older person has died, consider whether death may have been caused or hastened by someone who may benefit financially.
- Encourage the homeowner or concerned individuals to seek legal assistance, per departmental policy.
 - A civil lawyer may be able to help restore ownership of the property or use of the life estate to the older person, or obtain monetary damages for the misappropriation of the property.
- Make a report to *adult protective services*.

Guardians/Conservators

A guardian or conservator is appointed by a court to make personal and/or property decisions for a person who does not have *decision-making capacity*. Appointment of a guardian or conservator may be necessary to protect an older person from elder abuse. Sometimes, however, guardians or conservators misuse their legal authority in ways that result in financial exploitation or neglect of the incapacitated person.

Key Definitions and Facts

- A court may appoint someone to make personal and/or financial decisions for a person if a judge or a jury decides that the person lacks *decision-making capacity*.
- In most states, the person appointed to make personal decisions is known as either the guardian or the guardian of the person. Usually the person named to make financial decisions is called the guardian of the property, the guardian of the estate, or the conservator. Some states use different terminology, however. For simplicity, this guide generally will use **guardian/conservator**.
- States use different terms for the person who needs help making decisions. Some of those terms include disabled person, incapacitated person, incompetent, protected person, or ward. This guide will use **incapacitated person**.
- A guardian/conservator may be an incapacitated person's family member or friend, or may be a professional (e.g., a lawyer or a *trust officer*), a public agency, or a private non-profit or for-profit agency. Guardians/conservators may charge a fee for their services, but the fee must be reasonable according to state law or court rules, and generally must be approved by the court. Guardians/conservators must keep careful records of their services and time spent.
- The court issues an order or a letter listing the authority that the guardian/conservator has over the incapacitated person. The authority may be limited or full (**plenary**). The incapacitated person loses the right to make the decisions that the court has authorized the guardian/conservator to make.
- A guardian/conservator has a legal duty to act as a **fiduciary**. This means, generally, that the guardian/conservator must act in a totally trustworthy manner and make decisions that are consistent with decisions that the incapacitated person made before losing *decision-making capacity* or that are in the incapacitated person's best interest.

- Courts have a responsibility to monitor the actions of the guardians/conservators they have appointed, but the extent of this oversight varies widely from court to court. Guardianship monitoring practices may include:
 - Requiring a baseline inventory of the incapacitated person’s assets.
 - Requiring guardians/conservators to file financial plans and accountings, plans for future care, and periodic status reports.
 - Requiring a guardian/conservator to get a bond for the incapacitated person’s assets and assuring the bond has been approved.
 - Reviewing the inventories, accountings, plans, and reports.
 - Requiring court approval for expenditures above a certain amount.
 - Verifying reports and then investigating and sanctioning irregularities.

Relevance to Elder Abuse

- Someone may wrongfully take an individual to another state to get or avoid a guardianship/conservatorship.
- A guardian’s/conservator’s misuse of legal authority may result in financial exploitation or neglect. For example:
 - The guardian/conservator exceeds the authority given by the court (e.g., makes health care decisions when not given that authority).
 - The guardian/conservator self-deals (e.g., pays his/her own bills with the incapacitated person’s money or sells the incapacitated person’s house below market rate to a relative).
 - The guardian/conservator acts contrary to incapacitated person’s best interest (e.g., because of financial motives, the guardian/conservator fails to pay for adequate health care services, isolates the incapacitated person from family or friends, or fails to ask the court to end the guardianship/conservatorship when the incapacitated person regains *capacity*).
- Appointment of a guardian/conservator may be necessary to stop elder abuse. For example, if an agent is abusing the authority given by a *power of attorney* and the principal has lost the *capacity* to revoke the *power of attorney*, a judge may need to appoint a guardian/conservator to monitor the agent or to act instead of the agent.

Actions to Consider

- Consider whether a guardian’s/conservator’s breach of fiduciary duty violates local, state, or federal laws relative to:

- Elder abuse
 - Embezzlement
 - False instrument
 - Financial exploitation
 - Forgery
 - Fraud (e.g., credit card, tax, or Medicaid)
 - Larceny
 - Money laundering
 - Neglect
 - Theft
- Obtain and analyze the court's monitoring documents as evidence; determine whether reports have been submitted when required.
 - Ask the person claiming to be a guardian/conservator to produce a court's order or letter. Investigate further if that person cannot or will not produce a court document, if the document does not name that person as the guardian/conservator, or if the document does not appear to allow the actions in question. If it is not clear whether the document names that person as guardian/conservator or allows the actions in question, contact the court or ask the prosecutor's office for an opinion.
 - If allowed by law, initiate actions to freeze the incapacitated person's assets or take other steps to stop the guardian/conservator from dissipating remaining assets.
 - Consider whether the guardian/conservator is in a position to do this to others.
 - Consider notifying the court if a guardian/conservator is under criminal investigation.
 - If the incapacitated person has died, consider whether death may have been caused or hastened by actions or inactions of the guardian/conservator.
 - Encourage the incapacitated person or concerned individual to seek legal assistance, per departmental policy.
 - Abuse or misuse of authority by a guardians/conservator is a civil problem too. Civil law remedies may stop the guardian/conservator from exploiting or neglecting the incapacitated person or may lead to recovery of exploited money and property.
 - Make a report to *adult protective services*.

Advance Directives: Health Care Power of Attorney, Health Care Proxy, and Living Will

Advance directives are used to provide directions about future health care decisions in case the person loses the *capacity* to make or the ability to express those decisions. Advance directives and end-of-life care raise complex issues of civil rights, ethics, health care policy, medical malpractice, and religion that are far beyond the scope of this guide. But advance directives and elder abuse sometimes intersect in ways that may involve crimes.

Key Definitions and Facts

- Advance directive is a general term for two documents that individuals can use to guide decisions about future health care if they lose the *capacity* to make or the ability to express those decisions themselves. Those documents are:
 - A **health care power of attorney**, also known as a **health care proxy**, is used by a person (the **principal**) to give someone else (the **proxy** or **agent**) legal authority to make health care decisions for the principal.
 - The norm is to have a separate health care and financial *power of attorney*, but in some states one document may be used to give someone authority to make both types of decisions.
 - A **living will** does not authorize another person to make decisions. Instead, it instructs the proxy/agent, some other decision-maker (such as a *guardian/conservator*), or health care providers about the type of care (including emergency treatment) that a person wants or does not want.
- A person must have appropriate *decision-making capacity* to make an advance directive.
- While the use of advance directives to provide guidance is very helpful, courts generally have said that verbal and other written evidence of a person's wishes regarding health care is acceptable.
- In some states, the verbal appointment of a proxy/agent is not legally effective; appointment may only be made in writing.
- People have the right to change their minds about who can make decisions for them and what treatment they do or do not want. State laws govern what to do if a person indicates a change of mind and whether *capacity* is required.

- Generally, an advance directive will indicate when it should become effective. Otherwise, state law will provide guidance.
- A proxy/agent must make decisions that are consistent with the principal's instructions. If instructions are not clear, the proxy's/agent's decisions should be consistent with what the principal would likely do or, if that is not known, should be in the principal's best interest.

Relevance to Elder Abuse

- Elder abuse may occur before the advance directive is signed.
 - A person who lacks appropriate *decision-making capacity* to make an advance directive may be coerced, persuaded, threatened, or tricked into signing.
 - A person with *decision-making capacity* may sign the advance directive because of *undue influence*, duress, fraud, or misrepresentation.
 - Someone may prepare an advance directive that does not reflect the person's wishes.
 - The signature on an advance directive may be forged.
- Providing health care treatment to a person whose advance directive indicates that such treatment is not wanted could be considered physical abuse. Failure to provide or arrange for treatment for a person whose advance directive indicates that such treatment is desired could be considered neglect.
 - A proxy/agent may make decisions that are contrary to the older person's wishes.
 - A proxy/agent may make decisions that the advance directive or state law does not authorize the proxy/agent to make.
- A proxy/agent may make treatment decisions that are inconsistent with the guidance provided in an advance directive (or otherwise known) and are not in the older person's best interest. Motives may include:
 - Hastening the older person's death to receive an inheritance or end the burden of acting as a caregiver.
 - Saving money.
 - Preventing changes to the status quo, such as having to move out of the older person's home or losing other financial support provided by the older person.
 - Preventing family members, *adult protective services (APS)*, or law enforcement from having access to the older person.
 - Covering up evidence of a crime.

- Family members may disagree about who the proxy/agent is, what health care instructions were provided, or what treatment should be given. These disputes may involve allegations of elder abuse by one family member against another.
- The state may have costs due to the abuse or neglect. For example, the failure to provide treatment desired by the older person may lead to the need for long-term care paid by Medicaid. Consider whether the perpetrator's actions in causing that result may be a crime.

Actions to Consider

- The circumstances surrounding the signing of an advance directive or the proxy's/agent's activities or decisions may violate local, state, or federal laws relative to:
 - Elder abuse
 - False instrument
 - Financial exploitation
 - Forgery
 - Fraud (e.g., credit card, tax, or Medicaid)
 - Identity theft
 - Larceny
 - Manslaughter
 - Murder
 - Neglect
 - Theft
- State law governs the requirements for a valid advance directive, such as having it signed by witnesses or a notary public. A proxy/agent named in a legally defective advance directive may not have legal authority to make decisions. However, the defective document may still provide evidence of the person's wishes.
- Investigate further if a person claiming to be a proxy/agent cannot or will not produce the advance directive, if the document does not name that person as a proxy/agent, or if the document does not appear to authorize the decisions in question. If it is not clear whether an advance directive names that person as proxy/agent or authorizes the decisions in question, ask the prosecutor's office for an opinion.
- Consider whether it is necessary to protect the older person from physical or financial harm by taking temporary custody of the older person.
- If the older person has died, consider whether death may have been caused or hastened by actions or decisions that were contrary to the older person's wishes.

- Encourage the victim or concerned individual to seek legal assistance, per departmental policy.
 - Civil law remedies may stop unwanted care, lead to provision of desired care, or lead to financial compensation for physical and emotional harm.
- Make a report to *APS*.

Joint Owners/Joint Accounts

Bank or credit union accounts, investments, securities, real estate, and other forms of property can be owned by more than one person. Sometimes an older person gives away or loses joint ownership of property through financial exploitation.

Key Definitions and Facts

- Bank or credit union accounts, investments, securities, real estate, and other forms of property can be owned by more than one person. This is generally called joint ownership; it can take several different forms.
- The form of joint ownership governs how much of the property is owned by each joint owner, the rights of each owner to use or sell the property, and what happens to the property after an owner dies.
- Common forms of joint ownership that might be encountered in a legal document (such as a *deed* for a house or a retirement account statement) include:
 - Joint account: an account in the name of more than one person.
 - Joint tenancy: usually means the surviving owner is entitled to all the property.
 - Tenancy by the entirety: usually refers to ownership by spouses, with the survivor entitled to all the property.
 - Tenancy in common: usually means each owner is entitled to a percentage of the property, and his or her survivors only inherit that percentage.
- The specific meaning of these terms may be established by the legal document in which they appear, or by state or federal law.
- There are many reasons for jointly owning property. Two common reasons that are relevant to elder abuse include:
 - Convenience/planning for the possible loss of *capacity*—for example, an older person may add an adult child or a paid caregiver as an account owner so that the child or caregiver can help with banking and bill paying if the older person loses the *capacity* to do those things.
 - Enabling property to be transferred after the older person's death without the costs and time associated with probating a *will* or the estate if there is no *will* in court.

Relevance to Elder Abuse

Financial exploitation related to jointly owned accounts and property can occur if:

- A person named on a bank account only for convenience takes all or most of the money from the account.
- Someone who may benefit financially is involved in establishing a joint ownership that does not reflect the older person's true wishes through acts such as forgery, fraud, identity theft, misrepresentation, or *undue influence*.
- A person without *capacity* is coerced, induced, threatened, or tricked into establishing joint ownership that financially benefits another person.
- A joint owner who has *capacity* gives up his or her interest in property to another joint owner as a result of coercion, fraud, inducements, misrepresentation, threats, trickery, or *undue influence*.

Actions to Consider

- The circumstances surrounding establishment of joint ownership or the sale or transfer of jointly owned property may constitute a local, state, or federal crime relative to:
 - Conspiracy
 - Elder abuse
 - False instrument
 - Financial exploitation
 - Forgery
 - Fraud
 - Identity theft
 - Larceny
 - Theft
- If a joint owner was legally entitled to all the money in the account or to full control of the property, prosecution may be difficult or impossible.
- If the older person has died, determine whether the death was caused or hastened by a joint owner or someone else who may benefit financially.
- Consider whether there are other victims, such as the older person's intended recipients of the jointly owned property or other joint owners whose interests were harmed.

- Consider whether the alleged perpetrator is in a position (e.g., a caregiver, *guardian/conservator*, or lawyer) to victimize other older people.
- Encourage the victim to seek legal assistance, per departmental policy.
 - Civil law remedies may prevent further exploitation. They also may lead to recovery of property that was wrongfully taken or sold, or to monetary damages for that property.
- Make a report to *adult protective services*.

Medicaid Planning

Medicaid planning is a term used for the process of spending down assets to become poor enough to qualify for Medicaid payment of long-term care. Medicaid planning is legal, but the circumstances surrounding the process may involve elder abuse. Also, the need for Medicaid benefits may be an indicator of financial exploitation.

Key Definitions and Facts

- Medicaid is a health and medical services program for certain individuals. Adults who do not have dependent children may be covered if they (1) are over age 65, or blind, or disabled; **and** (2) have low incomes and limited assets.
- The Medicaid program is governed by federal law, but each state establishes its own eligibility guidelines and administers its own program. Some states use a different name for the program. For example, California calls it Medi-Cal, Tennessee calls it TennCare, and some states call it Medical Assistance.
- Medicaid pays for long-term care services provided to eligible individuals. Medicare, which is the federal health insurance program for older people, generally does not pay for long-term care.
- Long-term care is very expensive. Many people cannot afford it but at the same time they have too much income or too many assets to qualify for Medicaid. Federal law allows individuals to spend down their assets in certain ways so that they can qualify for Medicaid. This is commonly referred to as **Medicaid planning**. The rules for Medicaid planning are extremely complicated; it is not necessary to know these rules to understand the connection between Medicaid planning and elder abuse but if you want more information contact the Medicaid agency in your state.

Relevance to Elder Abuse

- Even though Medicaid planning is legal, the circumstances surrounding it may involve financial exploitation by an older person’s relatives who want to preserve assets for themselves or by other individuals. Examples include:
 - A person without appropriate *decision-making capacity* is coerced, persuaded, threatened, or tricked into engaging in Medicaid planning.
 - A person who has *decision-making capacity* participates in the process because of *undue influence*, duress, fraud, or misrepresentation.

- A lawyer prepares Medicaid planning documents at the request of the older person's relative and never talks to the older person to ensure that he or she wants to do Medicaid planning and has appropriate *decision-making capacity*.
- The older person's signature is forged on documents used for Medicaid planning.
- A *guardian/conservator*, agent under a *power of attorney*, or trustee of a *trust* engages in Medicaid planning without having legal authority to do so, or makes decisions that do not reflect the older person's wishes or are not in the older person's best interest.
- A lawyer or other person misappropriates the older person's assets under the guise of Medicaid planning.
- Family members may disagree about whether the older person should move into a *nursing home* or whether Medicaid planning should occur. These disputes may involve allegations of elder abuse by one family member against another.
- A person applying for Medicaid who seemingly had adequate assets to pay for long-term care (at least for a while) may be a victim of financial exploitation.
- The state Medicaid agency may deny benefits to a victimized older person because the spend-down of assets violated the Medicaid rules. For example, if the older person gives his or her house to an adult child as a result of threats, the Medicaid agency may deny benefits because the supposed gift occurred too near the time of the application for Medicaid benefits. The older person may then try to get a "hardship exemption" by claiming that he or she should not be penalized for being a victim of financial exploitation. In deciding whether to grant the hardship exemption, the Medicaid agency will likely consider whether there was an investigation by *adult protective services (APS)*, law enforcement, or both agencies, and whether the perpetrator was prosecuted.

Actions to Consider

- The circumstances surrounding the preparation or signing of documents for Medicaid planning purposes may constitute a local, state, or federal crime relative to:
 - Conspiracy
 - Elder abuse
 - False instrument
 - Financial exploitation
 - Forgery
 - Identity theft
 - Larceny

- Medicaid fraud
 - Theft
- Consider whether the alleged perpetrator is in a position (e.g., a caregiver, *guardian/conservator*, or lawyer) to victimize other older people.
- Encourage the victim to seek legal assistance, per departmental policy.
 - A civil lawyer can help with recovering money or property from an exploiter. In addition, a civil lawyer can assist a victim in obtaining a hardship exemption if the Medicaid agency denies benefits.
- Make a report to *APS*.

Power of Attorney

A power of attorney is a legal document that may be used to plan for the possible loss of *capacity* because it gives someone authority to act for the person who made the document. It can be misused to financially exploit an older person.

Key Definitions and Facts

- A power of attorney is a legal document used by someone (the **principal**) to give someone else (the **agent** or **attorney-in-fact**) the authority to act for the principal.
- There are two broad categories of power of attorney:
 - Specific: an agent is given authority to do a specific thing, such as sign documents at a real estate closing for a principal who is out of town.
 - General: an agent is given broad authority to make decisions.
- A principal must have *decision-making capacity* to sign a power of attorney.
- An agent's authority ends when the principal revokes that authority or when the principal dies. Actions that the agent takes before learning of the principal's revocation of the power of attorney or death generally are legally effective.
- All states have laws that allow individuals to make a **durable** power of attorney. A durable power of attorney is a general power of attorney that stays in effect even if the principal loses *decision-making capacity*. Currently, most states require a principal to use words in the power of attorney indicating that it is intended to be durable, but a growing number of states have laws that presume that a power of attorney is durable unless the document says it is not. Durability is relevant to the question of whether the agent had legal authority to take the actions in question. **The rest of this section will use POA/DPA to mean a power of attorney that is durable.**
- The purpose of the POA/DPA is to allow someone to act for the principal if he or she ever loses *decision-making capacity*. Therefore, a POA/DPA is usually written very broadly and gives the agent a lot of authority.
- Generally, a POA/DPA covers financial matters and a *health care power of attorney* covers health care decisions, but sometimes a POA/DPA will authorize an agent to make both financial and health care decisions.
- Usually a POA/DPA becomes effective when the principal signs it, although that does not mean the agent has to start acting on behalf of the principal immediately. A **springing** POA/DPA, however, becomes effective later, when a time or event specified in the POA/DPA or in state law occurs. For example, a POA/DPA might say that it becomes effective when

the principal reaches a certain age, if the principal is hospitalized, or if two doctors decide that the principal has lost *decision-making capacity*.

- State law governs whether a POA/DPA must contain certain words, be witnessed, be notarized, or be filed in the public records. A POA/DPA that does not comply with state law may not be legally effective, meaning that the agent does not have authority to act on the principal's behalf.
- An agent has a legal duty to act as a **fiduciary**. Generally, this means that the agent must act in a totally trustworthy manner and make decisions that are consistent with decisions that the principal made previously or that are in the principal's best interest.

Relevance to Elder Abuse

An agent can misuse a POA/DPA to financially exploit the principal. Usually called **POA/DPA abuse**, this can occur in several ways.

- Before the POA/DPA is signed:
 - A principal without appropriate *decision-making capacity* is persuaded, coerced, induced, threatened, or tricked into signing a POA/DPA.
 - A principal who has *decision-making capacity* signs the POA/DPA because of *undue influence*, duress, fraud, or misrepresentation.
 - An agent or someone helping the agent (e.g., a lawyer) prepares a POA/DPA that does not reflect the principal's wishes. For example, a lawyer may have prepared a POA/DPA at the request of the older person's relative without ever talking to the older person to determine if he or she wants the POA/DPA and has the *capacity* to make that decision.
 - A principal's signature is forged.
- After the POA/DPA is signed:
 - An agent exceeds the authority given. For example, an agent makes gifts when not given that authority.
 - An agent engages in self-dealing. For example, an agent pays his or her own bills with the principal's money.
 - An agent's actions conflict with the principal's expectations. For example, an agent has authority to make gifts but does so in a way that undoes or undermines the principal's plan for giving away assets after the principal's death.

Actions to Consider

- An agent who commits POA/DPA abuse may have violated local, state, or federal laws relative to:
 - Elder abuse
 - Embezzlement
 - False instrument
 - Financial exploitation
 - Forgery
 - Fraud (e.g., credit card, tax, or Medicaid)
 - Identity theft
 - Larceny
 - Money laundering
 - Theft
- Investigate further if the alleged agent cannot or will not produce the POA/DPA, if the document does not name that person as the agent, or if the document does not appear to allow the decisions in question. If it is not clear whether the POA/DPA names that person as the agent, was legally effective, or authorizes the actions in question, ask the prosecutor's office for an opinion.
- If allowed by law, initiate action to freeze the principal's assets or take other steps to stop the agent from dissipating any remaining assets.
- If the principal has died, consider whether death may have been caused or hastened by an agent who may benefit financially.
- Consider whether there are other victims, such as the intended recipients named in the principal's *will*.
- Consider whether the agent is in a position (e.g., a caregiver or a lawyer) to victimize other people.
- Encourage the principal to seek legal assistance, per departmental policy.
 - POA/DPA abuse is also a civil legal problem. Civil law remedies may stop the agent from exploiting the older person even more. These remedies also may result in recovery of exploited money or property.
- Make a report to *adult protective services*.

Long-Term Care Facilities: Nursing Homes, Assisted Living, Board and Care Homes, and Other Residential Care Facilities

Residents of long-term care facilities are vulnerable to abuse (including sexual abuse), neglect, and exploitation by staff, family members, visitors to the facility, or other residents. Elder abuse in a care facility may be a crime, just as it is in someone's house or apartment. The failure to report abuse that has occurred in a facility also may be a crime.

Key Definitions and Facts

- Long-term care facility is a general term that includes two categories:
 - Nursing homes
 - Residential care facilities
- Generally, nursing homes provide skilled nursing and medical care, rehabilitation services, custodial care, and other health-related services. Residential care facilities provide supportive services and non-medical care, which may include help with managing and taking medications.
- Nursing homes, which also are known as skilled nursing facilities, are governed by both federal and state laws and regulations.
- Residential care facilities are governed only by state laws and regulations.
- Many types of facilities are classified as residential care facilities. Their names and definitions vary from state to state, but they may include:
 - Assisted living facilities
 - Adult care homes
 - Adult congregate care
 - Board and care homes
 - Domiciliary care homes
 - Homes for the aged

- Personal care homes
- Shelter care facilities
- Unlicensed residential care facilities exist. There are two reasons for the lack of a license:
 - The facility does not have enough beds to trigger the licensure requirement in local or state law. For example, it has two residents and state law requires licensure only if it has three or more beds.
 - The facility is required to be licensed but is operating illegally.
- State law may require criminal background checks for employees or contractors of nursing homes or residential care facilities.
- A number of agencies besides law enforcement and prosecution may be involved in detecting, investigating, preventing, prosecuting, or remedying abuse, neglect, or exploitation of residents of nursing homes and other care facilities. These may include:
 - Adult Protective Services (APS): in some states, APS has responsibility to receive reports of and to investigate suspected abuse, neglect, or exploitation in nursing home or residential care facilities and to provide or arrange for services if the suspicions are substantiated.
 - Attorneys General: the U.S. Department of Justice, the federal U.S. Attorneys' Offices, and state Attorneys General may prosecute or bring civil lawsuits related to elder abuse in nursing homes or other facilities.
 - Consumer Protection: state consumer protection agencies may bring lawsuits against nursing homes or other facilities if the failure to provide care or to protect residents from abuse, neglect, or exploitation violates consumer protection laws.
 - Coroner/Medical Examiner: some states require certain types of care facilities to notify the coroner or medical examiner when a resident dies.
 - Licensure and Certification: state regulators license nursing homes and some other types of facilities and periodically monitor facilities' compliance with federal and state laws and regulations.
 - Long-Term Care Ombudsman Program: a state or local program that advocates for residents of long-term care facilities (as defined by state law). In a few states, the ombudsman program also acts as APS for facility residents.
 - Medicaid Fraud Control Unit: a unit of state government (currently in all states except North Dakota) that prosecutes fraud and resident abuse or neglect in long-term care facilities that receive Medicaid funding. In some states, the unit also may prosecute resident abuse or neglect in facilities that do not receive Medicaid funding, such as assisted living facilities or board and care homes.

- Protection and Advocacy: a state program that provides legal representation and advocacy for persons with disabilities who reside in long-term care or other facilities.

Relevance to Elder Abuse

- Residents of nursing homes and other types of long-term care facilities can be highly vulnerable to physical and sexual abuse, neglect, financial exploitation, and emotional/psychological abuse by:
 - Facility management and staff
 - Visitors to the facility, including:
 - Contractors or other workers
 - Residents' own family members or guests
 - Family members or guests of other residents
 - Other residents
- Elder abuse may occur in numerous ways in a long-term care facility. Examples include:
 - Physical abuse: broken bones, bruises, burns, lacerations, or other physical injuries resulting from improper handling during bathing, other care, or transfers from one place to another; hitting, kicking, punching, or shoving; and the inappropriate use of chemical or physical restraints.
 - Sexual abuse: rape, nonconsensual or unwanted touching, and improper touching during bathing or medical treatment.
 - Neglect: the failure to provide or the inadequate provision of food, medication, treatment, basic care, and supervision may result in amputations, bed sores (also known as pressure sores or decubitus ulcers), dehydration, malnutrition, other medical problems, and death. Nurses or other staff may dilute or divert residents' pain medications to sell or for personal use.
 - Financial exploitation: stealing a resident's belongings, benefit checks and spending money, credit cards, or identity.
 - Emotional/psychological abuse: belittling, humiliating, intimidating, teasing, threatening, or yelling at a resident.
- Facility management and staff may be required by federal and/or state law to report suspected or known elder abuse or acts that constitute criminal activity to law enforcement, APS, or some other government agency. The failure to report may be a crime and also may be an indicator that evidence was tampered with or destroyed.

Actions to Consider

- Abuse, neglect, or exploitation occurring in a long-term care facility may violate local, state, or federal laws relative to:
 - Elder abuse
 - False instrument
 - Financial exploitation
 - Forgery
 - Fraud (e.g., credit card, tax, or Medicaid)
 - Identity theft
 - Larceny
 - Manslaughter
 - Murder
 - Neglect
 - Rape
 - Sexual assault
 - Theft
- Determine whether you have jurisdiction over the facility and whether other law enforcement agencies have concurrent jurisdiction.
- Consider whether the alleged perpetrator is in a position to victimize other residents and whether other residents may have been victimized already.
- A care facility's failure to conduct criminal background checks on its employees or contractors may violate state law.
- Determine whether the facility management or staff was required by either federal or state law to report suspected or known elder abuse or criminal activity and whether such reports were made.
- If facility management or staff say they could not report suspected crime or cannot provide requested evidence because they must protect residents' "protected health information" under the federal Health Insurance Portability and Accountability Act (HIPAA), talk to your agency's lawyer. The HIPAA law has exceptions for law enforcement investigations and for reporting suspected elder abuse.
- Take emergency custody of the resident if it is within your agency protocols and it would not cause the person further harm. Hospitalization may be necessary. *APS*, the long-term care

- ombudsman program, or other agencies with responsibility to protect or advocate for facility residents may be able to make other temporary or permanent care arrangements.
- If the resident has died, consider whether death may have been caused or hastened by actions or inactions of facility staff or others.
 - Encourage the resident or concerned individuals to seek legal assistance, per departmental policy.
 - Civil lawyers may help residents or family members bring lawsuits against nursing homes or other facilities for failure to provide care or to protect residents from abuse, neglect, or exploitation.
 - Make a report to the state licensure and certification agency if appropriate or required.
 - Make a report to *APS* if it takes reports on and investigates elder abuse occurring in long-term care facilities.

Representative Payees, VA Fiduciaries, and Other Government Benefit Money Managers

Federal or state agencies that provide retirement/pension or other benefits may name a person or entity to receive and spend money on behalf of a beneficiary who lacks *capacity* to manage that money. The person or entity may misuse the authority over the money to financially exploit the older person.

Key Definitions and Facts

- A federal or state agency can name an individual or an entity to manage money it provides to a beneficiary if the agency decides that the beneficiary lacks *capacity* to manage the money because of impairment. Agencies use different names for these money managers. For example, the Social Security Administration calls them “representative (rep) payees” and the Department of Veterans Affairs calls them “VA fiduciaries.” **For simplicity, this section will refer to all types of agency-appointed money managers as rep payees.**
- Each agency has its own rules about appointment of a rep payee and the rep payee’s duties.
- Rep payees have authority to manage only the money that the agency provides to a beneficiary.
- Rep payees may be required to file periodic reports with the government agency on how they managed a beneficiary’s money from that agency.
- A rep payee may have other legal authority over the beneficiary if the rep payee also has been named as an agent under a *power of attorney*, a *guardian/conservator*, or as trustee of a *trust*.
- A rep payee may be a beneficiary’s family member or friend, a professional, a public agency, or a private non-profit or for-profit agency. Federal law may allow some agencies to be paid for acting as a rep payee. Rep payees may be required to obtain bonds, keep detailed records of the beneficiary’s expenses, and to file reports with the agency.
- Rep payees have a legal duty to act as a **fiduciary**. This means, generally, that rep payees must act in a totally trustworthy manner and make decisions in a beneficiary’s best interest.

Relevance to Elder Abuse

A rep payee can commit financial exploitation by misusing authority over a beneficiary's money, which is commonly known as **rep payee abuse**. For example, rep payees may:

- Fail to spend money on necessities, such as housing, food, and medical care.
- Exceed the authority given (e.g., control other money without legal authority to do so).
- Self-deal (e.g., buy things for the beneficiary that really only benefit the rep payee or pay his or her own bills with the beneficiary's money).
- Fail to follow the government agency's rules about charging the beneficiary for services.
- Mix the beneficiary's money with the rep payee's money.
- Keep the beneficiary's money although no longer serving as a rep payee (e.g., after the beneficiary has been murdered or died of natural causes).

Actions to Consider

- A rep payee's actions may violate local, state, or federal laws relative to:
 - Elder abuse
 - Embezzlement
 - False instrument
 - Financial exploitation
 - Forgery
 - Fraud (e.g., credit card, tax, or welfare)
 - Identity theft
 - Larceny
 - Making false statements
 - Neglect
 - Theft
- Ask a rep payee to produce proof of authority. Investigate further if an alleged rep payee cannot or will not produce proof of authority from the government agency, if documents do not name that person as rep payee, or if documents do not appear to allow the actions in question. If it is not clear that the person has been named as rep payee or is authorized to take the actions in question, contact the government agency or the prosecutor's office for an opinion.

- Determine whether the rep payee has filed reports required by the agency. If so, review the reports for evidence.
- If allowed by law, initiate actions to freeze a beneficiary's assets or take other steps to stop a rep payee from dissipating remaining assets.
- Consider whether the rep payee is in a position to victimize other people.
- If the beneficiary has died, consider whether death may have been caused or hastened by the payee.
- Make a report to the agency providing the benefits so it can investigate and take action. For example, it may end the rep payee's authority or pursue civil or criminal penalties.
- Encourage the beneficiary or concerned individuals to seek legal assistance, per departmental policy.
 - Rep payee abuse is also a civil legal problem. A civil lawyer may prevent more harm or recover exploited funds.
 - Civil courts can order a rep payee to account for how he or she spent the beneficiary's money.
 - Civil courts can undo a rep payee's actions.
 - Civil courts can order a rep payee to return the beneficiary's money.
- Make a report to *adult protective services*.

Trusts

A trust is a legal arrangement in which a person or an institution agrees to manage an adult's assets for the benefit of that adult or someone else named by that adult. A trust can be used as a tool for financial exploitation.

Key Definitions and Facts

- Just as there are different types of trusts, there are different reasons for creating trusts. Some of the most common reasons include: planning for someone to manage your assets on your behalf if you lose *decision-making capacity*, avoiding the time and expense of probating a *will*, avoiding taxes, and planning for someone to manage assets for minor children or for adult children with disabilities.
- An adult must have *decision-making capacity* to make, revoke, or change a trust.
- The person who creates the trust is generally known as the **grantor**, **trustor**, or **settlor**.
- People or institutions (such as banks) that manage trust assets are known as **trustees**.
- People or organizations for which assets are managed are usually referred to as **beneficiaries**.
- Depending on the type and purpose of a trust, one person may have more than one role. For example, a grantor also may be a trustee or a beneficiary.
- For a trust to be effective, ownership of the assets (**title**) must be transferred by the grantor to the trust. State laws govern whether the trust assets may be held in the name of the trustee or must be held in the name of the trust.
- Whether the trustee or the trust holds the trust assets, trustees have a legal duty to act as a **fiduciary**. This means, generally, that a trustee must act in a totally trustworthy manner in the interest of the beneficiary and trust, and must manage the trust's assets as instructed by trust documents.

Relevance to Elder Abuse

- Financial exploitation related to trusts may occur if:
 - A grantor lacking *decision-making capacity* is persuaded, coerced, threatened, or tricked into signing trust documents.
 - A grantor who has *decision-making capacity* signs trust documents because of *undue influence*, duress, fraud, or misrepresentation.

- Someone prepares trust documents that do not reflect the grantor's wishes.
 - Someone forges the grantor's signature.
 - A trustee changes or revokes a trust without having legal authority to do so or in ways that undermine the grantor's plans.
 - A trustee fails to follow the grantor's instructions for managing or distributing trust assets (e.g., by exceeding the powers given by the grantor).
 - A trustee uses trust assets for his or her own benefit or the benefit of others against the wishes of the grantor or the trust document.
- If a trust governing post-death distribution of assets fails because, for example, it was made under duress, then either the grantor's *will* or state law determines who inherits those assets. Causing a trust to fail can undermine the grantor's plans and may constitute exploitation.
 - Problems may become evident before or after the grantor dies. There may be multiple victims:
 - the grantor whose assets may have been stolen or whose estate plan may have been altered, or
 - beneficiaries whose assets or inheritance may have been stolen.

Actions to Consider

- The circumstances surrounding the preparation or signing of trust documents or distribution of trust assets may violate local, state, or federal laws relative to:
 - Conspiracy
 - Elder abuse
 - False instrument
 - Financial exploitation
 - Forgery
 - Fraud
 - Larceny
 - Theft
- If the grantor has died, consider whether death may have been caused or hastened by a trustee, beneficiary, or someone else who may benefit financially.
- Determine whether state law prevents someone who committed a crime against the grantor from being a beneficiary.

- Consider whether there are other victims, such as beneficiaries.
- Consider whether the trustee is in a position (e.g., a caregiver, trust officer, or lawyer) to do this to other older people.
- Encourage the grantor or concerned individuals to seek legal assistance, per departmental policy.
 - Civil law remedies may stop the trustee from exploiting the older person even more. Civil remedies also may result in recovery of exploited money or property.
- Make a report to *adult protective services*.

Reverse Mortgages

A reverse mortgage provides income that may enable an older person to continue living at home, but it is also a complex financial product that may be misused to financially exploit the homeowner. Loan proceeds, equity, or the home itself may be lost as a result.

Key Definitions and Facts

- A reverse mortgage is a special type of loan for older homeowners (aged 62+) who have substantial equity in their homes but are “cash poor.” Reverse mortgages allow older homeowners to borrow against the equity in the home (equity is the difference between the market value of the home and the amount owed on any mortgage). The loan provides income that enables the older person to continue living at home.
- A **home equity conversion mortgage (HECM)** is a type of reverse mortgage that is insured by the federal government and has special conditions. One condition is that a homeowner must meet with an unbiased counselor approved by the U.S. Department of Housing and Urban Development to learn about the pros and cons of reverse mortgages, their costs and requirements, and their alternatives.
- The **HECM for Purchase** is another type of reverse mortgage. The proceeds from the loan must be used to buy another home (usually smaller or more accessible).
- Most but not all reverse mortgages are HECMs. Some states have laws requiring counseling or other protections for homeowners who are interested in a non-HECM reverse mortgage.
- A reverse mortgage can provide income as a monthly payment, as a line of credit, or in one lump sum.

Relevance to Elder Abuse

- Financial exploitation related to reverse mortgages can occur in several ways, such as:
 - A homeowner lacking appropriate *decision-making capacity* is coerced, persuaded, threatened, or tricked to sign reverse mortgage documents.
 - A homeowner who has *decision-making capacity* signs reverse mortgage documents because of *undue influence*, duress, fraud, or misrepresentation.
 - An exploiter steals the homeowner’s identity and obtains a reverse mortgage.
 - An agent under a *power of attorney* misuses authority to get a reverse mortgage that the homeowner does not want.

- An agent under a *power of attorney* or someone else gets a reverse mortgage that the homeowner wants, but then steals the proceeds from the loan.
- An exploiter draws an unsuspecting homeowner into a property-flipping scheme that overcharges the homeowner and siphons the proceeds from the loan.
- An exploiter misleads a homeowner about the need to buy other financial products, such as annuities, to get a reverse mortgage.
- An exploiter inflates the appraisal to maximize the loan proceeds he or she intends to steal from the homeowner.
- An exploiter uses unfair and deceptive practices, such as false advertising about the costs and risks of reverse mortgages.
- Problems may come to light before or after the homeowner dies. There may be multiple victims:
 - the homeowner whose property *deed*, equity, or loan proceeds may have been stolen,
 - other people living in the home who may have to move out,
 - the bank or other lender that provided the reverse mortgage, or
 - the government that insured the mortgage.

Actions to Consider

- The circumstances surrounding the preparation or signing of reverse mortgage documents or the distribution of loan proceeds may violate local, state, or federal laws relative to:
 - Conspiracy
 - Elder abuse
 - Embezzlement
 - False instrument
 - Financial exploitation
 - Forgery
 - Fraud (mortgage lending or bank fraud)
 - Identity theft
 - Larceny
 - Money laundering
 - Theft

- Consider whether there are other victims, such as other people living in the home.
- Consider if the alleged perpetrator is in a position (e.g., a caregiver, *guardian/conservator*, or lawyer) to victimize other older people.
- Make a referral to the state attorney general or the U.S. attorney, bank or other business regulators, or consumer protection agencies.
- Encourage the homeowner or concerned individuals to seek legal assistance, per departmental policy.
 - A civil lawyer can help with revoking or changing a reverse mortgage, or with recovering misappropriated money or property.
- Make a report to *adult protective services*.

Wills

A will is a legal document that expresses a person's wishes for the distribution of his or her money or property after death. Wills are not effective until the person has died and the will has been probated. Financial exploitation related to wills can occur in a variety of ways.

Key Definitions and Facts

- A will is a legal document used by someone (the **testator**) to indicate who should receive the testator's money or property (the **estate**) after he or she dies.
- A testator must have **testamentary capacity** to make, change, or revoke a will. This is a lower standard than *decision-making capacity*. Generally, testamentary capacity means:
 - You understand you are signing a will.
 - You know the general nature and extent of your estate.
 - You know who would normally be expected to inherit your estate (e.g., your family), but that does not mean you have to leave anything to any of them.
 - You can indicate who you want to get your estate when you die and explain why.
- A testator who has testamentary capacity can change a will at any time before death. This is done by making a new will or by adding a **codicil**, which is a new section that changes an existing will.
- Wills do not become effective until the testator has died and the estate has been probated. **Probate** is the process in which a court decides if a will is valid, gives creditors the opportunity to make claims, and orders distribution of the estate. **People who expect to inherit under a will cannot take a testator's assets in anticipation of that inheritance.**
- If a will does not exist or is not valid, then state law governs who will inherit the estate.
- There are assets that are not governed by a will and that transfer outside of the probate process. These are usually called **non-probate assets** and may include some types of *jointly owned property, trusts, payable-on-death accounts, life insurance policies, annuities, and IRAs*.
- The person responsible for probating the will and distributing the estate as ordered by the court is generally known as the **executor**.
- The people or organizations that inherit the estate are generally known as **heirs**.
- Executors have a legal duty to act as a **fiduciary**. This means, generally, that the executor must act in a totally trustworthy manner and distribute the estate as ordered by the court.

Relevance to Elder Abuse

A will can be used as a tool for financial exploitation. Problems may come to light before or after the testator dies. Examples of exploitation related to a will include:

- Someone takes money or property before the testator dies and justifies it by saying “I was going to inherit it anyway.”
- A person lacking testamentary capacity is coerced, persuaded, threatened, or tricked into signing the will.
- A person who has testamentary capacity signs a will because of *undue influence*, duress, fraud, or misrepresentation.
- Someone prepares a will that does not reflect the testator’s wishes.
- The testator’s signature is forged.
- A *guardian/conservator*, agent under a *power of attorney*, or other fiduciary changes or revokes a will without having legal authority to do so or in ways that undermine the testator’s estate plan.
- An executor fails to follow a court’s order for distributing the estate.

Actions to Consider

- The circumstances surrounding the preparation or signing of a will or the distribution of the estate may constitute a local, state, or federal crime relative to:
 - Conspiracy
 - Elder abuse
 - False instrument
 - Financial exploitation
 - Forgery
 - Fraud
 - Identity theft
 - Larceny
 - Theft
- If the testator has died, consider whether death may have been caused or hastened by an heir, a disinherited person, or someone else who may benefit financially.

- Consider whether there were other victims, such as the testator whose money or property may have been stolen or whose estate plans may have been changed, and the intended heirs whose inheritance may have been stolen.
- Determine whether your state law prevents someone who committed a crime against the testator from inheriting.
- Consider whether the alleged perpetrator is in a position (e.g., a caregiver, *guardian/conservator*, or lawyer) to victimize other older people.
- Encourage the testator or concerned individuals to seek legal assistance, per departmental policy.
 - Before the testator dies, a civil lawyer can help with revoking or changing a will.
 - After the testator dies, a civil lawyer can challenge the validity of the will in probate.
- Make a report to *adult protective services*.

Agencies, Organizations, and Systems that May Be Involved with Elder Abuse Victims or Perpetrators

- *Adult protective services/elder protective services*
- Aging services (a state office on aging, an area agency on aging, an aging and disability resource center, or other state or local providers of services to older persons)
- Animal control/animal protection (such as the Humane Society)
- Attorney General (federal and state)
- Community corrections (pretrial, probation, and parole)
- Code enforcement
- Consumer protection agency
- Coroner
- County counsel (or other lawyer representing a local jurisdiction or pertinent local agency)
- Courts (federal and state)
 - Civil (includes domestic violence, elder protection, family, general jurisdiction, and probate courts)
 - Criminal
- Disability services
- Domestic violence program/family violence program
- Emergency services
- Facility regulators (state agencies that regulate *long-term care facilities, assisted living facilities, residential care facilities, and hospitals*)
- Financial services (e.g., banks, brokers, credit unions, financial advisors, *trust* departments)
- Forensic accountant
- Forensic pathologist
- Forensic psychiatrist
- Forensic toxicologist
- Funeral home director

- Geriatric care manager
- Gerontologist
- *Guardian/Conservator* (who may be family members, friends, professionals, for-profit organizations, non-profit organizations, and government agencies)
- Health care providers
 - Dentists
 - Physicians (especially geriatricians and emergency room doctors)
 - Psychiatrists (especially geriatric psychiatrists)
 - Nurses (especially geriatric nurse practitioners and emergency room nurses)
- Hospital discharge planner
- Law enforcement (police, sheriffs, and state or federal investigators)
- Lawyers
 - Legal Services/Legal Aid
 - Lawyers in private practice (particularly those practicing elder, estate planning, or family law)
- Long-term care ombudsman program (state and local)
- Medicaid fraud control unit
- Medical examiner
- Mental health services
- Pharmacologist
- Prosecutors (in a state, the prosecutor may be known as a district attorney, city attorney, county attorney, state's attorney, prosecuting attorney, and may even include the state Attorney General's office)
- Public health agency
- Social Security Administration
- Sexual assault program
- U.S. Attorney's Office (prosecutes federal crimes)
- Veterans' Affairs
- Victim assistance and compensation programs

Selected Resources on Elder Abuse

Websites of Selected Federal Agencies

- **U.S. Department of Justice websites**
 - **Elder Justice**
www.justice.gov/elderjustice
 - Bureau of Justice Assistance
www.bja.gov
 - Civil Division
www.justice.gov/civil
 - National Institute of Justice
www.nij.gov
 - Office of Community Oriented Policing Services
www.cops.usdoj.gov
 - Office for Victims of Crime
www.ovc.gov
 - Office on Violence Against Women
www.justice.gov/ovw
- **U.S. Department of Health and Human Services websites**
 - **National Center on Elder Abuse**
A national resource center funded by the Department of Health and Human Services Administration on Aging
www.ncea.aoa.gov
 - Administration on Aging
www.aoa.gov
 - Centers for Disease Control and Prevention
www.cdc.gov/ViolencePrevention/eldermaltreatment/index.html
- Consumer Financial Protection Bureau Office for Older Americans
www.consumerfinance.gov/older-americans
- U.S. Federal Trade Commission
www.ftc.gov

- U.S. Postal Inspection Service
<https://postalinspectors.uspis.gov>
- Social Security Administration
www.socialsecurity.gov/payee
- Department of Veterans Affairs
www.benefits.va.gov/fiduciary

Websites of Selected National Organizations

- American Bar Association Commission on Law and Aging
www.americanbar.org/aging
- AEquitas, The Prosecutor's Resource on Violence Against Women
www.aequitasresource.org/about.cfm
- International Association of Chiefs of Police
www.theiacp.org
- National Adult Protective Services Association
www.napsa-now.org
- National Association of Medicaid Fraud Control Units
www.namfcu.net
- National Association of Triads
www.nationaltriad.org/index.htm
- National Center for State Courts Center for Elders and the Courts
www.eldersandcourts.org
- National Clearinghouse on Abuse in Later Life
www.ncall.us
- National Committee for the Prevention of Elder Abuse
www.preventelderabuse.org
- National Consumer Voice for Quality Long-Term Care
http://theconsumervoice.org/get_help
- National District Attorneys Association
www.ndaa.org
- National Sheriffs' Association
www.sheriffs.org

Capacity Assessment

The American Bar Association Commission on Law and Aging and the American Psychological Association have produced three manuals on capacity assessment:

- Assessment of Older Adults with Diminished Capacity: A Handbook for Lawyers (2005)
- Judicial Determination of Capacity of Older Adults in Guardianship Proceedings (2006)
- Assessment of Older Adults with Diminished Capacity: A Handbook for Psychologists (2008)

Information about obtaining the manuals is available here:

www.americanbar.org/groups/law_aging/publications/capacity_assessment.html.

Power of Attorney/Durable Power of Attorney Abuse

- “Durable Power of Attorney Abuse: It’s a Crime Too—A National Center on Elder Abuse Fact Sheet for Criminal Justice Professionals” (2008)
www.americanbar.org/groups/law_aging/resources/elder_abuse.html

Undue Influence and Elder Abuse

- *Undue Influence: The Criminal Justice Response* (YWCA Omaha, 2006), available from National Clearinghouse on Abuse in Later Life
www.ncall.us/justice/undue-influence

Differences between Criminal Courts and Civil Courts

Elder abuse cases may manifest in many ways. Many of those ways violate criminal laws and civil laws. It may be appropriate for an elder abuse case to be heard in both criminal and civil court. The courts have some diverse goals. They hear different types of cases (jurisdiction) and there are different burdens of proof in those cases. The victim's role in each type of court varies significantly.

This chart highlights key similarities and differences between criminal and civil courts. Understand that states and communities structure their court systems in different ways and have an array of names for their courts. Many communities have "courts of general jurisdiction" that hear criminal and civil cases. In other communities, there may be separate criminal courts and civil courts. There may be separate family courts that hear civil matters including divorce, adoption, and domestic violence. Many communities have separate probate courts that commonly hear civil matters such as *guardianship/conservatorship*, mental health, and *wills* and estates cases. A growing number of communities have one or more "specialized courts" such as domestic violence, drug, or elder courts that hear both criminal and civil cases related to a certain problem or population.

A chart highlighting these differences between criminal and civil courts appears on the next page.

Issue	Criminal Courts	Civil Courts
Key Goals	<ul style="list-style-type: none"> • Protect society • Punish/hold accountable the perpetrator • Protect the victim • Order the perpetrator to provide restitution to the victim 	<ul style="list-style-type: none"> • Protect the victim • Compensate the victim for harm caused • Determine whether actions were lawful and undo those that were not, or order that certain actions be taken • Resolve disputes
Types of Cases	Criminal matters	<ul style="list-style-type: none"> • Civil rights • Contract disputes • Family matters such as divorce and adoption • <i>Guardianship/conservatorship</i> • Health care and insurance • Mental health commitments • Personal injury/medical malpractice • Real estate matters such as foreclosures, landlord/tenant disputes, and property disputes • <i>Wills</i> and estates
Burden of Proof	“Beyond a reasonable doubt”	<ul style="list-style-type: none"> • “Preponderance of the evidence” • “Clear and convincing evidence”
Victim’s Role in the Lawsuit	Witness to the events that are the subject of the lawsuit and has no control over the case	Subject of the lawsuit and usually has some control over the case

Communicating with Older Individuals¹

Factors to Consider When Interviewing Older Individuals

- Individual variables (age, race, ethnic background, education level, sexual orientation, socioeconomic status, etc.)
- Physical abilities
- Cognitive abilities

Individual Variables

- Officers' perceptions
- Older individuals' perceptions of law enforcement
- Communication or actions may be misunderstood or misinterpreted

Keep Communication Barriers in Mind

- May not speak or read English
- May not read or write
- May be Deaf
- May need assistive devices to communicate

Strategies: Individual Variables

- Avoid making assumptions based on age, race, ethnic background, or sexual identity.
- Respect cultural traditions as much as possible.
- Recognize gender of officer may make a difference when talking to some victims and suspects.

¹ Reprinted with the permission of the National Clearinghouse on Abuse in Later Life (NCALL) from "Elder Abuse Training for Law Enforcement," Office on Violence Against Women, Federal Law Enforcement Training Center, and NCALL (2012).

Remember...

- Many older adults are in good health and do not have physical or cognitive disabilities that significantly impact their lives or a law enforcement investigation.
- That said, be aware of possible physical or cognitive limitations that may have an impact on your investigation.

Interviewing: Physical Limitations

- May need glasses, hearing aids, or other equipment to complete an interview
- May need assistance with getting to and from interviews (e.g., wheelchairs, walkers)
- May need to eat, take medications, and/or rest

Interviewing: Cognitive Limitations

- Victims may be discounted if:
 - Statements are not consistent
 - They appear confused
 - They have difficulty recalling events
 - They take longer to respond
 - They have a diagnosed medical condition like dementia or other cognitive limitation
- Temporary or Intermittent
 - Trauma
 - Lack of food or water
 - Medications
 - Offender tactics
 - Fatigue
 - Infections
- Permanent or Progressive
 - Depression or other mental illnesses
 - Traumatic brain condition
 - Dementia (one form: Alzheimer's Disease)