

Undue Influence Worksheets for Police, APS, and Probate Investigators

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In This Packet:

- 1) Brief overview of financial exploitation
- 2) Brief overview of the IDEAL model of undue influence
- 3) Two worksheets:
 - a. Events List Form: A reference sheet or table of contents for your investigation.
 - b. Events Details Form: A form to describe specific events and list the source of corroborating evidence, such as documents, photographs, videotapes, etc.

Introduction. Elder abuse has been called "the crime of the 21st century," and includes neglect or physical, sexual, emotional, verbal, or financial abuse. Financial abuse can be particularly difficult to investigate. In addition to simple theft and forgery, methods commonly seen in elder cases include *embezzlement*, *false pretense*, *trick and device*, and *undue influence*. Perpetrators may try to obtain the victim's assets through the use of legal documents such as joint tenancy agreements, powers of attorney, quitclaim deeds, wills, or trusts.

Incident Demographics. Based on reported cases, the most common victim is a widowed elderly woman over 85 who lives alone. According to the 1998 National Elder Abuse Incidence Study, only 20% of elder abuse cases are reported. Other studies suggest as few as 7% of cases are reported. The most common abusers are the victim's child or spouse, but "brand new best friends," caregivers, neighbors, professional advisors, or anyone else may be a perpetrator. Elder financial abuse occurs in all racial and socioeconomic groups. In many financial exploitation cases, all of the victim's assets are endangered.

Consent. In order to prosecute a case where the elder seems to have *willingly* given their assets to the perpetrator, it is important to obtain information about two factors:

1) **Undue Influence:** This refers to a form of manipulation or deception used to gain assets without the true consent of the victim. Document this using the IDEAL format and worksheets, which follow.

2) **Mental Capacity:** This refers to the victim's ability to give knowledgeable consent. Document your observations of the victim's specific behaviors regarding the transactions of concern and similar activities, in order to help show the victim's vulnerability or lack of informed consent. For a list of pertinent behaviors to evaluate, refer to relevant training materials.

Note: "Undue influence" and "mental capacity" are separate issues. Undue influence may exist without mental impairment; and mental impairment may exist without undue influence. Both address the issue of *vulnerability*. If a person takes advantage of an elder's vulnerability to obtain assets, the act often can be prosecuted as a crime.

Importance of a Relationship. Undue influence is the result of a *relationship* between the victim and the abuser. Anyone can be subject to undue influence, given the right circumstances (examples: hostages, kidnap victims, prisoners of war, cult victims.) There is no "mental test" for undue influence.

Medical Records. People are more vulnerable to manipulation when they have certain psychological or medical conditions, such as dementia. It is important to document all medical conditions and medications. When documenting medications include doses and times taken. It is also important to obtain the person's medical records. Medical experts who have specialized training in assessment of mental capacity may then be contacted to provide detailed assessment, as needed.

Criminal or Civil Remedies? Some financial abuse cases may be addressed through civil remedies in addition to, or in lieu of, criminal prosecution. Civil remedies may include litigation or petitions to Probate Court for conservatorship or guardianship. Consider referring victims and their families to social service agencies, such as Adult Protective Services, local agencies on aging, or the Public Guardian.

Use of Experts. Field investigators who have completed a suitable course of instruction may use this packet to analyze and present evidence. Sometimes, however, experts in undue influence may be needed to: (1) evaluate the victim's unique susceptibility to manipulation, (2) describe the impact of such manipulation upon the victim's behavior and (3) conduct a *retrospective*, or *historical*, evaluation. Expertise in general medical issues is not the same as expertise in undue influence. When needed, it is important to find psychiatrists or psychologists who have specialized knowledge, skills, and experience in this field. Experts may document their findings in the form of a written report, and may also testify at depositions, court hearings, or trial.

The "I-D-E-A-L" Model

For Analyzing Potential Undue Influence in Financial Cases

Isolation

Dependence upon the perpetrator

Emotional Manipulation or **E**xploitation of Vulnerability

Acquiescence

Loss

1. Isolation from pertinent information, friends, relatives, or usual advisors. Common causes that need documentation are:

- a. **Naturally occurring, or pre-existing** history of poor or non-existent relationships. Examples include: hostile relationships with family existing before the suspected abuse, a lack of living relatives, or having few friendships.
- b. **Medical disorders** affecting the body or the brain are common causes of isolation. Examples include: diabetes, heart disease, deafness, blindness, dementia, depression, or other psychiatric illnesses.
- c. **Perpetrator interference** is another common cause. Examples include: blocking telephone calls, intercepting mail, blocking visitors, or "chaperoning" (i.e., the perpetrator is present whenever victim has contact with others).
- d. **Geographic or technological isolation** is the least common cause. Victims cannot contact or have access to friends, family, relatives, or appropriate professionals. Examples include: lack of telephone or lack of transportation.

2. Dependence upon the perpetrator. Common causes that need documentation are:

- a. **Physical dependence:** Examples include food preparation, taking victim to physicians, etc.
- b. **Emotional dependence:** Examples include sweetheart scams, unemployed son moving back in with widowed mother, new boyfriend/girlfriend.
- c. **Information dependence:** Examples include professionals/advisors who misuse positions of trust to manipulate their victims.

- 3. Emotional Manipulation** - Any emotion may be manipulated, but the most common emotion to be manipulated is *fear*.
or Exploitation of Vulnerability - The perpetrator may exploit a victim's known or suspected vulnerability.
- Emotional manipulation often centers on issues of companionship/friendship and safety/security. Promises that these will be maintained if the victim complies, or threats that these will be lost if the victim disobeys, are common.
 - Examine the statements and behavior of both the suspect and victim for evidence of emotional manipulation. It is especially important to document any changed or altered behavior.
 - Exploitation of vulnerabilities includes behaviors such as providing alcohol to a drinker in exchange for benefits; having a vision-impaired person sign a legal document; or misrepresenting documents to the cognitively impaired.
- 4. Acquiescence** - The victim appears to consent or submit, but does so because of items 1, 2, and 3.
- Document the victim's history of submitting to others, in addition to his or her general behavior.
 - The perpetrator may not directly ask the victim to give money or property.
 - If there is no acquiescence by the victim, consider other prosecutable acts, such as embezzlement, false pretense, or trick and device.
- 5. Loss** – This refers to actual financial loss.
- Financial loss is usually necessary for criminal prosecution. It is helpful, but not always necessary, for civil litigation.
 - Document all financial losses in chronological order, to help organize evidence associated with each loss.

Evidence of undue influence can be obtained by listing all pertinent events in the relationship between the victim and the perpetrator. These events by themselves may not appear significant, but taken together they can demonstrate a *pattern of behavior* revealing the existence of the I-D-E-A-L conditions in the relationship.

Information about pertinent events should come from a variety of sources, including the following:

- Victim statements
- Family members statements
- Medical records
- Observations of investigators, as contained in their *written reports*. ALL county workers – APS, police, Public Guardian, Fire/Paramedics, etc., should provide a written narrative of their involvement and what they saw, heard, and in some cases, smelled or touched. Photos or videos can add detail and objectivity.
- Caregivers, friends, and neighbors
- Service personnel such as delivery drivers, hairdressers, bank tellers, etc.

Remember, the most convincing information usually comes from people who have no standing in the case.

Events List

Events listed by _____

Page ___ of ___

Instructions: Make copies of this blank page so you can document all the important events in the case. The list you submit should be in chronological order. If you choose to type this list, include the headings shown below. (For **Event Details**, use the form that follows.)

Event #	Date	Time	Location	Event Brief description - use Details form for more info	I D E A L ¹	Witness ²	Evidence (documents, photos, videos, etc.)

¹ Condition(s) being described, if any: **I**=Isolation, **D**=Dependence, **E**=Emotional manipulation or Exploiting Vulnerability, **A**=Acquiescence, **L**=Loss. More than one condition may be indicated. If an event does not directly indicate any IDEAL condition, this column should be left blank.

² Persons listed here should be those who actually witnessed the event. If you do not know who the witnesses were (other than the victim), explain this on the Details form, shown below.

Event Details

Event Details listed by _____

Page ____ **of** ____

(Make additional copies of this blank form as needed)

Event # _____ (from Events list)	Summary
Condition Described (check one or more): <input type="checkbox"/> Isolation <input type="checkbox"/> Dependence <input type="checkbox"/> Emotional Manipulation or Exploiting Vulnerability <input type="checkbox"/> Acquiescence <input type="checkbox"/> Loss	
Details (refer to witnesses and evidence listed previously): 	

Example Page

Events List

Events listed by _____ *Investigator's Name* _____

Page ____ of ____

Instructions: Make copies of this blank page so you can document all the important events in the case. The list you submit should be in chronological order. If you choose to type this list, include the headings shown below. (For **Event Details**, use the form that follows.)

Event #	Date	Time	Location	Event Brief description - use Details form for more info	I D E A L	Witness	Evidence (documents, photos, videos, etc.)
13	4/13/01		Home of Ms. Jones (Victim's daughter)	Mr. Jones tells his son " Ms. Perp will take care of me for the rest of my life if I sign over the house."	E	Mr. Jones Jr.	Letter from Mr. Jones Jr. to Ms. Jones, 4/14/02
14	6/01		Home of Mr. Jones Jr.	Mr. Jones says Ms. Perp wants more money or she will leave him. Mr. Jones says he was lonely after his wife died, and he cannot bear to be lonely again.	E	Mr. Jones Jr.	Interview with Mr. Jones Jr. 9/18/01
15	6/17/01	4:37 PM	ATM in casino	Ms. Perp withdraws \$400.00 using Mr. Jones' card.	L	Friend #1	Interview of Friend #1, Bank ATM records

Example Page

Event Details

Event Details listed by Investigator's Name

Page ___ of ___

(Make additional copies of this blank form as needed)

Event # <u> 15 </u> (from Events list)	Summary
Condition Described (check one or more): <input type="checkbox"/> Isolation <input type="checkbox"/> Dependence <input type="checkbox"/> Emotional Manipulation or Exploiting Vulnerability <input type="checkbox"/> Acquiescence <input checked="" type="checkbox"/> Loss	
Details (refer to witnesses and evidence listed previously): Friend #1 tells officers that she and Ms. Perp went to the casino together on 6/17/01 at about 3:00 PM. She and Ms. Perp played craps. Ms. Perp lost \$300.00 then said "I'll be back." Ms. Perp returned with several \$20 bills and resumed playing until approximately 6:00 PM. According to Friend #1, she and Ms. Perp go to the casino " at least once a month." Bank records for 4/17/01 show that \$400.00 was withdrawn from Mr. Jones' account from the ATM located in the casino at 4:37 PM.	