

Adult Protective Services (APS) Financial Exploitation of Vulnerable Adults Instructors Guide

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Recommended Selection Criteria for Trainers

- This curriculum is designed to be team-taught by 2-3 professionals. One law enforcement or victim services advocate, one state or county attorney and one adult protective services specialist.
- Law enforcement and prosecutors are involved in providing content and answering questions in almost all modules. Therefore the trainers must be knowledgeable about elder abuse, domestic violence, and sexual abuse and must be comfortable facilitating a significant portion of the training.
- The trainers must be comfortable teaching as a team and working respectfully with professional from other disciplines

How to Use This Curriculum

- This training is designed to be delivered in approximately 2-3 hours. It should cover the elements found in the course materials and leave enough time for participant discussion and questions.
- Participants should be given breaks at appropriate intervals. (i.e. 50 minutes with 10 minute break)
- Instructors should be familiar with the participant guidebook “Financial Exploitation of Vulnerable Adults” and understand concepts, statutes and group exercise.
- Additional resources and/or information may be added as applicable.

Equipment and Materials

- Guidebook should be printed and distributed to each participant.
- Laptop and projector may be used although not necessary
- . Make copies of the agenda to handout to the attendees,
- Make copies of Financial Exploitation Training Survey's
- Sign in sheets should be provided to document attendance and contact information.

**Adult Protective Services (APS)
Financial Exploitation of Vulnerable Adults
Agenda**

Introduction

Administer pre-test

Page 2-6 of the Financial Exploitation Training manual

This section will introduce the concept of financial exploitation.

Topics:

- Examples of process for investigation
- Statistics

Participants will be able to:

- Describe how to efficiently break up the elements of a case
- Describe why it is important to investigate

Definitions

Page 7-11

This section will define components of financial exploitation cases

Participants will be able to:

- Define population included by statute
- Define “Capacity to Consent” and how it applies to APS cases
- Define “Undue Influence” and how it may apply to financial exploitation cases
- Define and understand “Mandatory Reporting” and how it applies

Adult Protective Services

Civil Statute §62-A-301 through 62A-3-321

Criminal Statute §76-5-111

Administrative Code R510-302

Pages 12-52

This section cites the civil and criminal laws that govern Adult Protective Services. Administrative Rules further clarifies the responsibilities of the Division.

Participants will be able to:

- Define difference between civil and criminal laws
- Identify characteristics to use specific laws

- Identify guiding principles of Adult Protective Services
- Describe roles and responsibilities of APS staff
- Describe APS case processes

Characteristics and Factors of Elder Financial Exploitation

Pages 53-56

This section introduces the Fraud Triangle and elements of the crime. It also explores characteristics of victims and perpetrators.

Participants will be able to:

- Identify the three elements of a crime
- Describe Undue Influence and associated tactics
- Describe assessment factors to determine Undue Influence
- Recognize both victim and perpetrator characteristics associated with financial exploitation

Roles in Investigation

Pages 57-59

This section describes the various agencies that may investigate financial exploitation of a vulnerable adult

Participants will be able to:

- Identify agencies that may investigate cases of financial exploitation
- Describe the role each agency may take in the investigation
- Know when to refer to specific agencies

Investigating the Case

Pages 60-67

This section details the steps in investigating financial exploitation

Participants will be able to:

- Identify steps in the investigation
- Describe the interview process and potential questions for both victim and perpetrator
- Identify documentary evidence and source
- Describe possible scene evidence
- Identify and describe additional sources of evidence and information

Building a Case

Document Preparation and Analysis

Pages 68-70

This section will describe process of preparing the case for analysis

Participants will be able to:

- Identify and describe the documents necessary for case analysis
- Describe the process of organizing case documents
- Identify the gaps in evidence
- Describe methods for case analysis

Utilizing the Financial Auditor

Pages 71-74

This section defines the function and resources of the Financial Auditor

Participants will be able to:

- Describe the role of the Auditor
- Identify resources specifically available to the Auditor
- Describe the Administrative Subpoena process

Coordinating and Collaborating

Pages 75-77

This section identifies additional resources

Participants will be able to:

- Identify resources available to assist with investigation
- Know the importance of collaboration on cases

Tips and Good to Know

Pages 78-85

This section details good information in developing a case

Participants will be able to:

- Know how to read and interpret financial documents
- Understand acronyms
- Understand and describe investment terminology

Reporting and Presenting

Pages 86-87

This section explains the method of presenting the report

Participants will be able to:

- Identify necessary case documents
- Identify source and relevance of evidence to case
- Define analysis and conclusion process
- Know how to structure report
- How to structure financial evidence for court

Financial Exploitation Case Study

Pages 88-107

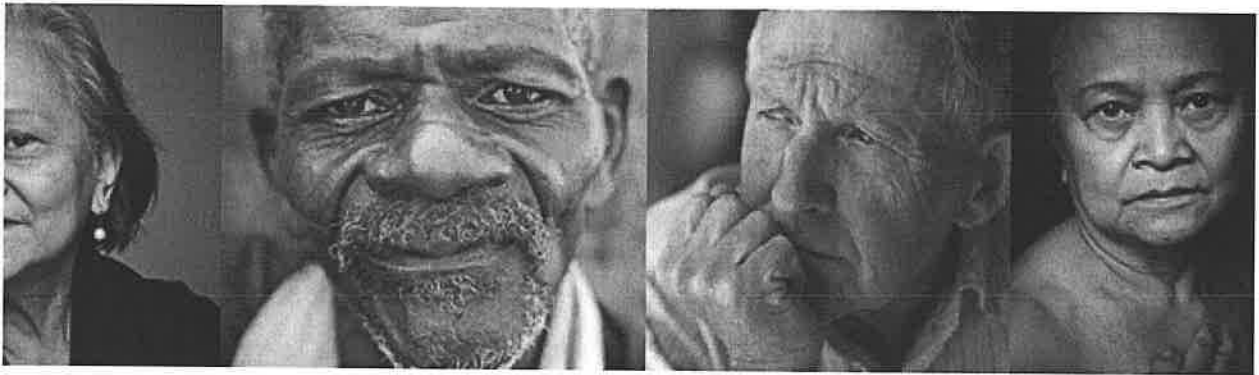
The case study is an analysis and discussion tool to apply all the principles of investigating a case of financial exploitation of a vulnerable adult.

Participants will be able to:

- Identify components of the case
- Identify and analyze evidence presented
- Identify next steps

Administer the Post Test

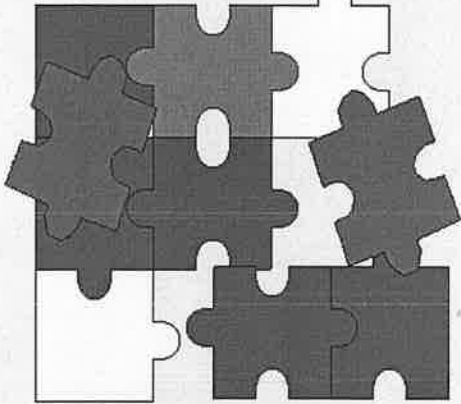
Financial Exploitation Of Vulnerable Adults



Introduction

This manual was designed as a training tool for Adult Protective Services and Law Enforcement. It focuses on statutes, rules, procedures, techniques and resources specific to cases of financial exploitation of vulnerable adults. It is not intended to be exhaustive in nature and not a substitute for legal advice.

Pieces of the Puzzle



Every Case Is Its Own Puzzle

- Cases may appear and act like a puzzle
- Each case is different and its own challenge – some more challenging than others
- Each case has different pieces - different sizes – Different angles – even though the pieces may appear the same at first glance
- The pieces may not fit into the obvious places

Think What other information do you need to piece it all together?

Think About The Old Cliché

How do you eat an elephant?

Compare eating an elephant with a large and complicated case –

It's too big

This is just too much

Where will I even start?

There is just no way I can do this

Yes you can.....Break it down.....One bite at a time



Think about the puzzle:

First you take all the pieces out of the box and set aside all of that cutting sawdust that is left over – the stuff you don't need

Then you separate all the major colors or texture groups – think “accounts” or whatever documents you have. Organize it

Then you separate out all the edge and corner pieces – think “easy stuff”

Then you piece together the border – it becomes a picture frame, the foundation of your case, maybe your data entry point

Then you start piecing together the matching colors or textures – think “analysis” of your documents, one group at a time.

As you go along, write yourself notes, important or questionable things, questions you have, this is your follow-up list

Use sticky notes to identify items of interest

Add important dates or occurrences to your timeline

Identify any missing pieces – think documents

Think about how you're looking at your data, do you need to look at it from a different angle

Monthly, yearly, categorize it – Pivot tables – charts This will help you notice things you did not notice before

Give yourself time, eating an elephant will generally take longer than you think
That's ok, you want to get it right

Back to eating the elephant

Yes you can – Break it down – One bite at a time

Financial Exploitation of Vulnerable Adults is a Crime

- Fastest growing crime in America
- Estimated that a million dollars a day is lost (stolen/scammed) by those 60 years and older in the State of Utah
- One of the most common forms of abuse reported to Adult Protective Services
- Prosecuted less often than other forms of abuse
- Almost 50% of people with dementia experience some form of abuse

Cooper, C. Selwood, A. Glanchard, M. Walker, Z. Blizard, R & Livingston, G.



Statistics

- One in nine seniors reported being abused, neglected or exploited in the past twelve months; the rate of financial exploitation is extremely high, with 1 in 20 older adults indicating some form of perceived financial mistreatment occurring in the recent past
- Elder abuse is vastly under-reported; only one in 44 cases of financial abuse is ever reported
- Abused seniors are three times more likely to die and elder abuse victims are four times more likely to go into a nursing home
- 90% of abusers are family members or trusted others
- Almost one in ten financial abuse victims will turn to Medicaid as a direct result of their own monies being stolen from them

National Adult Protective Services Association

Definitions

Vulnerable Adult

U.C.A. §62-A-301

Vulnerable Adults of the age of 65

An adult over the age of 18 who has a mental or physical impairment which substantially affects their ability to:

- Provide personal protection
- Provide necessities such as food, shelter, clothing, or mental or other health care
- Obtain services necessary for health, safety or welfare
- Carry out the activities of daily living
- Manage the adult's own financial resources; or
- Comprehend the nature and consequences of remaining in a situation of abuse, neglect or exploitation

Capacity to Consent

U.C.A. §62-A-301-6

Capacity to Consent means the ability of a person to understand and communicate regarding the nature and consequences of decisions relating to the person, and relating to the person's property and lifestyle, including a decision to accept or refuse services

U.C.A §510-302-4

Limited Capacity means that an adult person's ability to understand, communicate, make decisions regarding the nature and consequences the person's life or property is limited in one or more, but not all, functional areas, or during identified times of day, due to a mental issues, developmental disability organic brain disorder, physical illness or disability, chronic use of drugs, chronic intoxication, short-term memory loss or other cause.

U.C.A. 76-5-111(1m)

Lacks Capacity to Consent means an impairment by reason of mental illness, developmental disability, organic brain disorder, physical illness or disability, chronic use of drugs, chronic intoxication, short-term memory loss, or other cause to the extent that a vulnerable adult lacks sufficient understanding of the nature or consequences of decisions concerning the adult's person or property.

Two Types of Financial Capacity

- Executional
- Decision Making

Financial Competence

- Financial competence refers to the financial skills one possesses, as demonstrated through financial knowledge and financial judgment, typically assessed in a controlled (e.g., office or clinical setting).
- Financial performance refers to one's degree of success in handling contextual cues, and resources in one's actual environment (i.e. the actual use of one's financial knowledge and judgment in concrete, real-life situations). For example, a person may be fully competent in appreciating the importance of retirement savings, but at the level of performance may not have sufficient self-control, foresight, or planning, skills to actually save money for retirement. Individuals must both decide on their financial goals and take the steps necessary to influence the realization of those goals to possess successful financial self-management. Thus, successful financial performance, involves intact cognitive and behavioral components. Importantly, these are complex.



Methods and Measures for Assessing Competence and Performance

- The goal of financial capability assessment is to evaluate – as objectively as possible – and individual's abilities to manage or direct the management of his or her funds in a way that routinely meets the person's basic needs of food, shelter, and clothing. Assessment of financial capability involves his collection, integration, and interpretation of relevant information from a variety of sources.

These sources of information may include:

- Interviews with the individual
- Behavioral observations of the individual
- Formal financial capability assessment instruments (e.g. structured interviews)
- Records from physicians, psychologists, nurses, social workers, professional counselors, occupational therapists, rehabilitation counselors, and other health care professionals; and
- Communication with and from knowledgeable third parties (e.g. family members, friends, non-licensed professionals).

Financial Incapacity

- The law starts with an assumption of capacity, which refers to decision making regarding a number of financial tasks, such as general financial management of assets and debts, writing check, paying bills, knowing and using currency and coins, making contracts and writing wills. Financial incapacity means a person is unable to manage their financial resources. This can be the result of a number of conditions including mental illness, dementia, drug use, physical illness and disability. Determination of incapacity is complex. Psychological evaluation, medical reviews, as well as legal standards (that vary from state-to-state) are used in the determination.

Exploitation

Obtain or use the Vulnerable Adult's funds, assets, or property with the intent to temporarily or permanently deprive the vulnerable adult of the use, benefit or possession of his property for the benefit of someone other than the vulnerable adult.

- Theft of funds or valuables
Can be cash, investments, retirement funds, vehicles, real property, jewelry, antiques, basically anything that has value according to the elder at issue
- Misuse of adult's home or belongings
- Inappropriate use of phone, food or valuables
- Transfer of assets: real property, vehicles, firearms, etc.
- Misuse of power of attorney, guardian/conservatorship
Overreach of fiduciary power
- Misappropriation of income
- Financial investment or service (long-term annuities)
- Identity theft
- Extortion (blackmail, coercion)
- Forgery of elder's signature



Undue Influence

U.C.A. §62A-3-301(28)

Undue Influence occurs when a person:

- (a) Uses influence to take advantage of a vulnerable adult's mental or physical impairment; or
- (b) Uses the person's role, relationship, or power:
 - (i) to exploit, or knowingly assist or cause another to exploit, the trust, dependency, or fear of a vulnerable adult (or uses the person's role, relationship, or power); or
 - (ii) to gain control deceptively over the decision making of the vulnerable adult

Mandatory Reporting

U.C.A. § 62-A-305(1)

- (1) A person who has reason to believe that a vulnerable adult has been the subject of abuse, neglect or exploitation shall immediately notify Adult Protective Services Intake or the nearest law enforcement agency. When the initial report is made to law enforcement, law enforcement shall immediately notify Adult Protective Services intake. Adult Protective Services and law enforcement shall coordinate as appropriate, their efforts to provide protection to the vulnerable adult.
- (2) When the initial report of subsequent investigation by Adult Protective Services indicates that a criminal offense may have occurred against a vulnerable adult:
 - (a) Adult Protective Services shall notify the nearest local law enforcement agency regarding the potential offense; and
 - (b) the law enforcement agency may initiate an investigation in cooperation with Adult Protective Services.

Adult Protective Services Statutes and Rule

Statute/Code/Law

Describe the entire body of law (rules and regulations) that guide, govern and conduct our society.



Civil Statute

Utah Code §62A-3-301 through §62A-3-321

Defines authority and powers of Adult Protective Services as well as civil laws

Criminal Statute

Utah Code §76-5-111

Defines criminal laws associated with vulnerable adults

Administrative Code

Utah Administrative Code R510-302

Administrative law is the body of **law** that governs the activities of **administrative** agencies of government. Government agency action can include rule making, adjudication, or the enforcement of a specific regulatory agenda.

Criminal, Civil, Administrative

Initially, treat all investigations as if the case might be criminal:

- **Criminal Law** deals with crimes and legal punishment of criminal offenses
May result in incarceration, fines, and/or restitution to the victim
Burden of Proof: Beyond a Reasonable Doubt
- **Civil Law** deals with disputes between individuals or organizations
Results in compensation for damages or injunctions to stop behavior
Burden of Proof: Preponderance of the Evidence
- **Administrative Law** deals with government agencies and related rules and regulations **
Burden of Proof: Preponderance of the Evidence

**Note that these cases are often criminal and are more than civil cases or family disputes



Civil vs Criminal vs Administrative Law

	Civil Law	Criminal Law	Administrative Law (Civil)
Definition	Civil law deals with the disputes between individuals, organizations, or between the two, in which compensation is awarded to the victim.	Criminal law is the body of law that deals with crime and the legal punishment of criminal offenses.	Administrative law is the body of law that governs the activity of administrative agencies of government.
Purpose	To deal with the disputes between individuals, organizations, or between the two, in which compensation is awarded to the victim.	To maintain the stability of the state and society by punishing offenders and deterring them and others from offending.	To regulate the social, economic and political spheres of human interaction. State Statute provides for rule and decision making, adjudication and enforcement.
Jury opinion	In cases of civil law, the opinion of the jury may not have to be unanimous. Laws vary by state and country. Juries are present almost exclusively in criminal cases; virtually never involved in civil actions. Judges ensure law prevails over passion.	In the criminal justice system, the jury must agree unanimously before a defendant is convicted.	Juries are not involved in Administrative cases.
Case filed by	Private party	Government	Government
Decision	Defendant can be found liable or not liable, the judge decides this.	Defendant is convicted if guilty and acquitted if not guilty, the jury decide this.	Agency investigates and supports or rejects allegations of wrong doing. If appealed an informal adjudicative proceeding is held. Judge makes ruling.
Standard of proof	"Preponderance of evidence." Claimant must produce evidence beyond the balance of probabilities.	"Beyond a reasonable doubt".	"Preponderance of evidence." Agency must produce evidence beyond the balance of probabilities.
Burden of proof	Claimant must give proof however, the burden may shift to the defendant in situations of Res Ipsa Loquitur (The thing speaks for itself).	"Innocent until proven guilty": The prosecution must prove defendant guilty.	Agency must provide proof however, the burden may shift to the defendant in situations of Res Ipsa Loquitur (The thing speaks for itself).
Type of punishment	Compensation (usually financial) for injuries or damages, or an injunction in nuisance.	A guilty defendant is subject to Custodial (imprisonment) or Non-custodial punishment (fines or community service). In exceptional cases, the death penalty.	Offender is entered into a state registry that may disqualify offender from obtaining licenses, certifications, employment or volunteering at/by specific government agencies.
Examples	Landlord/tenant disputes, divorce proceedings, child custody proceedings, property disputes, personal injury, etc.	Theft, assault, robbery, trafficking in controlled substances, murder, etc.	Abuse, Neglect or Financial Exploitation
Appeals	Either party (claimant or defendant) can appeal a court's decision.	Only the defendant may appeal a court's verdict. The prosecution is not allowed to appeal.	The accused may appeal a supported case. A hearing will be held; both parties may argue their case. A Judge makes the ruling.
Commencement of proceedings	State/People/Prosecution by summons or indictment	By way of pleadings, Representatives of the state, Prosecutor, Attorney General.	Offender is served notice of supported finding; may appeal within 30 days.

https://www.diffen.com/difference/Civil_Law_vs_Criminal_Law

U.C.A. §76-5-111

Identifies the elements of the crimes of abuse, neglect and exploitation, and the criminal penalties for each act committed against this vulnerable population.

- Section 1: Defines abuse, abandonment, deception, exploitation, intimidation, isolation, neglect, position of trust and confidence, vulnerable adult etc.
- Section 2 and 3: Outlines the crimes of abuse and neglect of a vulnerable adult. This includes physical injury, permitting the victim to be placed in a situation where the adult's person or health is endangered, or causing or permitting that adult's person or health to be injured, abused, or neglected.
- Section 4: Outlines the crime of exploitation. This includes taking or unjustly or improperly using the funds, credit, assets, or other property of vulnerable victims.

Utah

Civil Statute §62A-3-301 - 321

Utah Code 62A Abuse, Neglect, or Exploitation of a Vulnerable Adult

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Adult Protective Services

§62A-3-301. Definitions.

As used in this part:

- (1) **"Abandonment"** means any knowing or intentional action or failure to act, including desertion, by a person or entity acting as a caretaker for a vulnerable adult that leaves the vulnerable adult without the means or ability to obtain necessary food, clothing, shelter, or medical, or other health care.
- (2) **"Abuse"** means:
 - (a) Knowingly or intentionally:
 - (i) attempting to cause harm;
 - (ii) causing harm; or
 - (iii) placing another in fear of harm;
 - (b) Unreasonable or inappropriate use of physical restraint, medication, or isolation that causes or is likely to cause harm to a vulnerable adult;
 - (c) Emotional or psychological abuse;
 - (d) A sexual offense as described in **Title 76, Chapter 5, Offenses Against the Person**; or
 - (e) deprivation of life sustaining treatment, or medical or mental health treatment except:
 - (i) As provided in **Title 75, Chapter 2a, Advance Health Care Directive Act**; or
 - (ii) When informed consent, as defined in **Section 76-5-111**, has been obtained.
- (3) **"Adult"** means a person who is 18 years of age or older.
- (4) **"Adult protection case file"** means a record, stored in any format, contained in a case file maintained by Adult Protective Services.
- (5) **"Adult Protective Services"** means the unit within the division responsible to investigate abuse, neglect, and exploitation of vulnerable adults and provide appropriate protective services.
- (6) **"Capacity to Consent"** means the ability of a person to understand and communicate regarding the nature and consequences of decisions relating to the person, and relating to the person's property and lifestyle, including a decision to accept or refuse services.
- (7) **"Caretaker"** means each person, entity, corporation, or public institution that assumes the responsibility to provide a vulnerable adult with care, food, shelter, clothing, supervision, medical or other health care, resource management or other necessities.
- (8) **"Counsel"** means an attorney licensed to practice law in this state.
- (9) **"Database"** means the statewide database maintained by the division under **Section 62A-3-311.1**.
- (10) **"Elder abuse"** means abuse, neglect, or exploitation of an elder adult.
- (11) **"Elder adult"** means a person 65 years of age or older.

- (12) **"Emergency"** means a circumstance in which a vulnerable adult is at an immediate risk of death, serious physical injury, or serious physical, emotional, or financial harm.
- (13) **"Emergency protective services"** means measures taken by Adult Protective Services under time-limited, court-ordered authority for the purpose of remediating an emergency.
- (14) (a) **"Emotional or psychological abuse"** means knowing or intentional verbal or nonverbal conduct directed at a vulnerable adult that results in the vulnerable adult suffering mental anguish, emotional distress, fear, humiliation, degradation, agitation, or confusion.
- (b) **"Emotional or psychological abuse"** includes intimidating, threatening, isolating, coercing, or harassing.
- (c) **"Emotional or psychological abuse"** does not include verbal or non-verbal conduct by a vulnerable adult who lacks the capacity to intentionally or knowingly:
- (i) engage in the conduct; or
 - (ii) cause mental anguish, emotional distress, fear, humiliation, degradation, agitation or confusion.
- (15) **"Exploitation"** means the offense described in **Subsection 76-5-111(4)** or **Section 76-5b-202**.
- (16) **"Harm"** means pain, mental anguish, emotional distress, hurt, physical or psychological damage, physical injury, serious physical injury, suffering, or distress inflicted knowingly or intentionally.
- (17) **"Inconclusive"** means a finding by the division that there is not a reasonable basis to conclude that abuse, neglect, or exploitation occurred.
- (18) **"Intimidation"** means communication through verbal or nonverbal conduct which threatens deprivation of money, food, clothing, medicine, shelter, social interaction, supervision, health care, or companionship, or which threatens isolation or abuse.
- (19) (a) **"Isolation"** means knowingly or intentionally preventing a vulnerable adult from having contact with another person by:
- (i) preventing the vulnerable adult from receiving visitors, mail, or telephone calls, contrary to the expressed wishes of the vulnerable adult, including communicating to a visitor that the vulnerable adult is not present or does not want to meet with or talk to the visitor, knowing that communication to be false;
 - (ii) physically restraining the vulnerable adult in order to prevent the vulnerable adult from meeting with a visitor; or
 - (iii) making false or misleading statements to the vulnerable adult in order to induce the vulnerable adult to refuse to receive communication from visitors or other family members.

- (b) The term "isolation" does not include an act intended to protect the physical or mental welfare of the vulnerable adult or an act performed pursuant to the treatment plan or instructions of a physician or other professional advisor of the vulnerable adult.
- (20) **"Lacks capacity to consent"** has the meaning as provided in **Section 76-5-111**.
- (21) (a) **"Neglect"** means:
 - (i) (A) failure of a caretaker to provide necessary care, including nutrition, clothing, shelter, supervision, personal care, or dental, medical, or other health care for a vulnerable adult, unless the vulnerable adult is able to provide or obtain the necessary care without assistance; or (B) failure of a caretaker to provide protection from health and safety hazards or maltreatment;
 - (ii) failure of a caretaker to provide care to a vulnerable adult in a timely manner and with the degree of care that a reasonable person in a like position would exercise;
 - (iii) a pattern of conduct by a caretaker, without the vulnerable adult's informed consent, resulting in deprivation of food, water, medication, health care, shelter, cooling, heating, or other services necessary to maintain the vulnerable adult's well being;
 - (iv) knowing or intentional failure by a caretaker to carry out a prescribed treatment plan that causes or is likely to cause harm to the vulnerable adult;
 - (v) self-neglect by the vulnerable adult; or
 - (vi) abandonment by a caretaker.
- (b) "Neglect" does not include conduct, or failure to take action, that is permitted or excused **under Title 75, Chapter 2a, Advance Health Care Directive Act**.
- (22) **"Physical injury"** includes the damage and conditions described in **Section 76-5-111**.
- (23) **"Protected person"** means a vulnerable adult for whom the court has ordered protective services.

- (24) **"Protective services"** means services to protect a vulnerable adult from abuse, neglect, or exploitation.
- (25) **"Self-neglect"** means the failure of a vulnerable adult to provide or obtain for water, medication, health care, shelter, cooling, heating, safety, or other services necessary to maintain the vulnerable adult's well being when that failure is the result of the adult's mental or physical impairment. Choice of lifestyle or living arrangements may not, by themselves, be evidence of self-neglect.
- (26) **"Serious physical injury"** is as defined in **Section 76-5-111**.
- (27) **"Supported"** means a finding by the division that there is a reasonable basis to conclude that abuse, neglect, or exploitation occurred.
- (28) **"Undue influence"** occurs when a person uses the person's role, relationship, or power to exploit, or knowingly assist or cause another to exploit, the trust, dependency, or fear of a vulnerable adult, or uses the person's role, relationship, or power to gain control deceptively over the decision making of the vulnerable adult.
- (29) **"Vulnerable adult"** means an elder adult, or an adult who has a mental or physical impairment which substantially affects that person's ability to:
- (a) provide personal protection;
 - (b) provide necessities such as food, shelter, clothing, or mental or other health care;
 - (c) obtain services necessary for health, safety, or welfare;
 - (d) carry out the activities of daily living;
 - (e) manage the adult's own financial resources; or
 - (f) comprehend the nature and consequences of remaining in a situation of abuse, neglect, or exploitation.

(30) **"Without merit"** means a finding that abuse, neglect, or exploitation did not occur
Amended by Chapter 176, 2017 General Session.

§ 62A-3-302. Purpose of Adult Protective Services Program.

Subject to the rules made by the division under **Section 62A-3-106.5**, Adult Protective Services:

- (1) shall investigate or cause to be investigated reports of alleged abuse, neglect, or exploitation of vulnerable adults;
- (2) shall, where appropriate, provide short-term, limited protective services with the permission of the affected vulnerable adult or the guardian or conservator of the vulnerable adult;
- (3) shall, subject to **Section 62A-3-320** provide emergency protective services; and
- (4) may make rules, in accordance with **Title 63G, Chapter 3, Utah Administrative Rulemaking Act**, and develop procedures and policies relating to:
 - (a) reporting and investigating incidents of abuse, neglect, or exploitation; and

- (b) providing protective services to the extent that funds are appropriated by the Legislature for this purpose.

Amended by Chapter 176, 2017 General Session

§ 62A-3-303. Powers and duties of Adult Protective Services.

In addition to all other powers and duties that Adult Protective Services is given under this part, Adult Protective Services:

- (1) shall maintain an intake system for receiving and screening reports;
- (2) shall investigate referrals that meet the intake criteria;
- (3) shall conduct assessments of vulnerability and functional capacity as it relates to an allegation of abuse, neglect, or exploitation of an adult who is the subject of a report;
- (4) Shall perform assessments based on protective needs and risks for a vulnerable adult who is the subject of a report;
- (5) may address any protective needs by making recommendations to and coordinating with the vulnerable adult or by making referrals to community resources;
- (6) may provide short-term limited services to a vulnerable adult when family or community resources are not available to provide for the protective needs of the vulnerable adult;
- (7) shall have access to facilities licensed by or contracted with, the department or the Department of Health for the purpose of conducting investigations;
- (8) shall be given access to, or provided with, written statements, documents, exhibits, and other items related to an investigation, including private, controlled, or protected medical or financial records of a vulnerable adult who is the subject of an investigation if:
 - (a) for a vulnerable adult who does not lack capacity to consent, the vulnerable adult signs a release of information; or
 - (b) for a vulnerable adult who lacks capacity to consent, an administrative subpoena is issued by Adult Protective Services;
- (9) may initiate proceedings in a court of competent jurisdiction to seek relief necessary to carry out the provisions of this chapter;
- (10) shall, subject to **Section 62A-3-320** provide emergency protective services;
- (11) may require all persons, including family members of a vulnerable adult and any caretaker, to cooperate with Adult Protective Services in carrying out its duties under this chapter, including the provision of statements, documents, exhibits, and other items that assist Adult Protective Services in conducting investigations and providing protective services;
- (12) may require all officials, agencies, departments, and political subdivisions of the state to assist and cooperate within their jurisdictional power with the court, the division, and Adult Protective Services in furthering the purposes of this chapter;

- (13) may conduct studies and compile data regarding abuse, neglect, and exploitation; and
- (14) may issue reports and recommendations.

Amended by Chapter 176, 2017 General Session

§ 62A-3-304. Cooperation by caretaker.

A caretaker, facility, or other institution shall, regardless of the confidentiality standards of the caretaker, facility, or institution:

- (1) report abuse, neglect, or exploitation of a vulnerable adult in accordance with this chapter;
- (2) cooperate with any Adult Protective Services investigation;
- (3) provide Adult Protective Services with access to records or documents relating to the vulnerable adult who is the subject of an investigation; or
- (4) provide evidence in any judicial or administrative proceeding relating to a vulnerable adult who is the subject of an investigation.

§ 62A-3-305. Reporting requirements -- Investigation -- Immunity -- Violation -- Penalty -- Nonmedical healing.

- (1) A person who has reason to believe that a vulnerable adult has been the subject of abuse, neglect, or exploitation shall immediately notify Adult Protective Services intake or the nearest law enforcement agency. When the initial report is made to law enforcement, law enforcement shall immediately notify Adult Protective Services intake. Adult Protective Services and law enforcement shall coordinate, as appropriate, their efforts to provide protection to the vulnerable adult.
- (2) When the initial report or subsequent investigation by Adult Protective Services indicates that a criminal offense may have occurred against a vulnerable adult:
 - (a) Adult Protective Services shall notify the nearest local law enforcement agency regarding the potential offense; and
 - (b) the law enforcement agency may initiate an investigation in cooperation with Adult Protective Services.
- (3) A person who in good faith makes a report or otherwise notifies a law enforcement agency, or Adult Protective Services of suspected abuse, neglect, or exploitation is immune from civil and criminal liability in connection with the report or other notification.
 - (a) A person who willfully fails to report suspected abuse, neglect, or exploitation of a vulnerable adult is guilty of a class B misdemeanor.

- (b) A covered provider or covered contractor, as defined in **Section 26-21-201**, that knowingly fails to report suspected abuse or neglect as required by this section, is subject to a private right of action and liability for the abuse or neglect of another person that is committed by the individual who was not reported to Adult Protective Services in accordance with this section.
- (4) Under circumstances not amounting to a violation of **Section 76-8-508**, a person who threatens, intimidates, or attempts to intimidate a vulnerable adult who is the subject of a report, a witness, the person who made the report, or any other person cooperating with an investigation conducted pursuant to this chapter is guilty of a class B misdemeanor.
- (5) An adult is not considered abused, neglected, or a vulnerable adult for the reason that the adult has chosen to rely solely upon religious, nonmedical forms of healing in lieu of medical care.

§ 62A-3-307. Photographing, video, and audio taping.

Law enforcement or Adult Protective Services investigators may collect evidence regarding alleged abuse, neglect or exploitation of a vulnerable adult by taking, or causing to be taken, photographs, video tape recordings, or audio or video tape accounts of a vulnerable adult, if the vulnerable adult:

- (1) consents to the taking of photographs, video tape recordings, or audio or video tape accounts; or
- (2) lacks the capacity to give the consent described in Subsection (1).

§ 62A-3-308. Peace officer's authority to transport - Notification.

- (1) A peace officer may remove and transport, or cause to have transported, a vulnerable adult to an appropriate medical or shelter facility, if:
 - (a) the officer has probable cause to believe that:
 - (i) by reason of abuse, neglect, or exploitation there exist exigent circumstances; and
 - (ii) the vulnerable adult will suffer serious physical injury or death if not immediately placed in a safe environment;
 - (b) the vulnerable adult refuses to consent or lacks the capacity to consent; and
 - (c) there is not time to notify interested parties or to apply for a warrant or other court order.
- (2) A peace officer described in Subsection (1) shall within four hours after a vulnerable adult is transported to an appropriate medical or shelter facility:
 - (a) notify Adult Protective Services intake; and
 - (b) request that Adult Protective Services or the division file a petition with the court for an emergency protective order.

§ 62A-3-309. Enforcement by division -- Duty of county or district attorney.

- (1) It is the duty of the county or district attorney, as appropriate under **Sections 17-18-1, 17-18-1.5, and 17-18-1.7**, to:
 - (a) assist and represent the division;
 - (b) initiate legal proceedings to protect vulnerable adults; and
 - (c) take appropriate action to prosecute the alleged offenders.
- (2) If the county or district attorney fails to act upon the request of the division to provide legal assistance within five business days after the day on which the request is made:
 - (a) the division may request the attorney general to act; and
 - (b) the attorney general may, in the attorney general's discretion, assume the responsibilities and carry the action forward in place of the county or district attorney.

§ 62A-3-311. Requests for records.

- (1) Requests for records maintained by Adult Protective Services shall be made in writing to Adult Protective Services.
- (2) Classification and disclosure of records shall be made in accordance **with Title 63G, Chapter 2, Government Records Access and Management Act**.

§ 62A-3-311.1. Statewide data base -- Restricted use and access.

- (1) The division shall maintain a database for reports of vulnerable adult abuse, neglect, or exploitation made pursuant to this part.
- (2) The data base shall include:
 - (a) the names and identifying data of the alleged abused, neglected, or exploited vulnerable adult and the alleged perpetrator;
 - (b) information regarding whether or not the allegation of abuse, neglect, or exploitation was found to be:
 - (i) supported;
 - (ii) inconclusive;
 - (iii) without merit; or
 - (iv) for reports for which the finding is made before May 5, 2008;
 - (A) substantiated; or
 - (B) unsubstantiated; and
 - (C) any other information that may be helpful in furthering the purposes of this part, as determined by the division.

- (3) Information obtained from the database may be used only:
- (a) for statistical summaries compiled by the department that do not include names or other identifying data;
 - (b) where identification of a person as a perpetrator may be relevant in a determination regarding whether to grant or deny a license, privilege, or approval made by:
 - (i) the department;
 - (ii) the Division of Occupational and Professional Licensing;
 - (iii) the Bureau of Licensing, within the Department of Health;
 - (iv) the Bureau of Emergency Medical Services and Preparedness, within the Department of Health, or a designee of the Bureau of Emergency Medical Services and Preparedness;
 - (v) any government agency specifically authorized by statute to access or use the information in the database; or
 - (vi) an agency of another state that performs a similar function to an agency described in Subsections (3)(b)(i) through (iv); or
 - (c) as otherwise specifically provided by law.

Amended by Chapter 195, 2017 General Session

§ 62A-3-311.5 Notice of supported finding – Procedure for challenging finding – Limitations.

- (1) (a) Except as provided in **Subsection (1) (b)**, within 15 days after the day on which the division makes a supported finding that a person committed abuse, neglect, or exploitation of a vulnerable adult, the division shall serve the person with a notice of agency action, in accordance with **Subsections (2) and (3)**.
- (b) The division may serve the notice described in **Subsection (1)(a)** within a reasonable time after the 15 day period described in **Subsection (1)(a)** if:
 - (i) the delay is necessary in order to:
 - (A) avoid impeding an ongoing criminal investigation or proceeding; or
 - (B) protect the safety of a person; and
 - (ii) the notice is provided before the supported finding is used as a basis to deny the person a license or otherwise adversely impact the person.
- (2) The division shall cause the notice described in **Subsection (1)(a)** to be served by personal service or certified mail.
- (3) The notice described in **Subsection (1)(a)** shall:
 - (a) indicate that the division has conducted an investigation regarding alleged abuse, neglect, or exploitation of a vulnerable adult by the alleged perpetrator;
 - (b) indicate that, as a result of the investigation described in **Subsection**

- (3)(a)**, the division made a supported finding that the alleged perpetrator committed abuse, neglect, or exploitation of a vulnerable adult;
- (c) include a summary of the facts that are the basis for the supported finding;
 - (d) indicate that the supported finding may result in disqualifying the person from:
 - (i) being licensed, certified, approved, or employed by a government agency;
 - (ii) being employed by a service provider, person, or other entity that contracts with, or is licensed by, a government agency; or
 - (iii) qualifying as a volunteer for an entity described in **Subsection (3)(d)(i) or (ii)**;
 - (e) indicate that, as a result of the supported finding, the alleged perpetrator's identifying information is listed in the database;
 - (f) indicate that the alleged perpetrator may request a copy of the report of the alleged abuse, neglect, or exploitation; and
 - (g) inform the alleged perpetrator of:
 - (i) the right described in **Subsection (4)(a)**; and
 - (ii) the consequences of failing to exercise the right described in **Subsection (4)(a)** in a timely manner.
- (4) (a) The alleged perpetrator has the right, within 30 days after the day on which the notice described in **Subsection (1)(a)** is served, to challenge the supported finding by filing a request for an informal adjudicative proceeding, under **Title 63G, Chapter 4, Administrative Procedures Act**.
- (b) If the alleged perpetrator fails to file a request for an informal adjudicative proceeding within the time described in **Subsection (4)(a)**, the supported finding will become final and will not be subject to challenge or appeal.
- (5) At the hearing described in **Subsection (4)(a)**, the division has the burden of proving, by a preponderance of the evidence, that the alleged perpetrator committed abuse, neglect or exploitation of a vulnerable adult.
- (6) Notwithstanding any provision of this section, an alleged perpetrator described in this section may not challenge a supported finding if a court of competent jurisdiction entered a finding in a proceeding to which the alleged perpetrator was a party, that the alleged perpetrator committed the abuse, neglect, or exploitation of a vulnerable adult, upon which the supported finding is based
- (7) A person who was listed in the database as a perpetrator before May 5, 2008, and who did not have an opportunity to challenge the division's finding that resulted in the listing, may at any time:
- (a) request that the division reconsider the division's finding; or

- (b) request an informal adjudicative proceeding, under **Title 63G, Chapter 4, Administrative Procedures Act**, to challenge the finding.

§ 62A-3-312. Access to information in database.

The database and the adult protection case file:

- (1) shall be made available to law enforcement agencies, the attorney general's office, city attorneys, the Division of Occupational and Professional Licensing, and county or district attorney's offices;
- (2) shall be released as required under **Subsection 63G-2-202(4)(c)**; and
- (3) may be made available at the discretion of the division, to:
 - (a) subjects of a report as follows:
 - (i) a vulnerable adult named in a report as a victim of abuse, neglect, or exploitation, or that adult's attorney or legal guardian; and
 - (ii) a person identified in a report as having abused, neglected, or exploited a vulnerable adult, or that person's attorney; and
 - (b) persons involved in an evaluation or assessment of the vulnerable adult as follows:
 - (i) an employee or contractor of the department who is responsible for the evaluation or assessment of an adult protection case file;
 - (ii) a multidisciplinary team approved by the division to assist Adult Protective Services in the evaluation, assessment, and disposition of a vulnerable adult case;
 - (iii) an authorized person or agency providing services to or responsible for, the care, treatment, assessment, or supervision of a vulnerable adult named in the report as a victim, when in the opinion of the division, that information will assist in the protection of, or provide other benefits to the victim;
 - (iv) a licensing authority for a facility, program, or person providing care to a victim named in a report; and
 - (v) legally authorized protection and advocacy agencies when they represent a victim or have been requested by the division to assist on a case, including:
 - (A) the Office of Public Guardian, created in **Section 62A-14-103**; and
 - (B) the Long-Term Care Ombudsman Program, created in **Section 62A-3-203**.

Amended by chapter **176**, 2017 General Session

§ 62A-3-314. Private right of action - Estate asset – Attorney fees.

- (1) A vulnerable adult who suffers harm or financial loss as a result of exploitation has a private right of action against the perpetrator.

- (2) Upon the death of a vulnerable adult, any cause of action under this section shall constitute an asset of the estate of the vulnerable adult.
- (3) If the plaintiff prevails in an action brought under this section, the court may order that the defendant pay the costs and reasonable attorney fees of the plaintiff.
- (4) If the defendant prevails in a an action brought under this section, the court may order that the plaintiff pay the costs and reasonable attorney fees of the defendant, if the court finds that the action was frivolous, unreasonable, or taken in bad faith.

§ 62A-3-315. Protective services voluntary unless court ordered.

- (1) Vulnerable adults who receive protective services under this part shall do so knowingly or voluntarily or upon district court order.
- (2) Protective services may be provided without a court order for a vulnerable adult who does not lack capacity to consent and who requests or knowingly or voluntarily consents to those services. Protective services may also be provided for a vulnerable adult whose guardian or conservator with authority to consent does consent to those services. When short-term, limited protective services are provided, the division and the recipient, or the recipient's guardian or conservator, shall execute a written agreement setting forth the purposes and limitations of the services to be provided. If consent is subsequently withdrawn by the recipient, the recipient's guardian or conservator, or the court, services, including any investigation, shall cease.
- (3) The court may order protective services to be provided to a vulnerable adult who does not consent or who lacks capacity to consent to services in accordance with **Section 62A-3-320**.

Amended by Chapter **176**, 2017 General Session

§ 62A-3-316. Costs incurred in providing of protective services.

Costs incurred in providing protective services are the responsibility of the vulnerable adult when:

- (1) the vulnerable adult is financially able to pay for those services, according to rates established by the division, and that payment is provided for as part of the written agreement for services described in **Section 62A-3-315**;
- (2) the vulnerable adult to be protected is eligible for those services from another governmental agency; or
- (3) the court appoints a guardian or conservator and orders that the costs be paid from the vulnerable adult's estate.

§ 62A-3-317. Venue for protective services proceedings.

Venue for all proceedings related to protective services and emergency protective services under this chapter is in the county where the vulnerable adult resides or is present.

Amended by Chapter **176**, 2017 General Session

§ 62A-3-320. Emergency protective services — Forcible entry.

- (1) Adult Protective Services shall ,immediately upon court order, provide emergency protective services to a court-designated vulnerable adult.
- (2) A court may, without notice, order emergency protective services immediately upon receipt of a petition for emergency protective services when a court finds that:
 - (a) the subject of the petition is a vulnerable adult;
 - (b)
 - (i) the vulnerable adult has no court-appointed guardian or conservator
 - (ii) the guardian or conservator is not effectively performing the guardian's or conservator's duties;
 - (c) an emergency exists; and
 - (d) the welfare, safety, or best interests of the vulnerable adult requires emergency protective services.
- (3) An emergency protective services order shall specifically designate the services that are approved and the facts that support the provision of those services.
- (4) Services authorized in an emergency protective services order may include hospitalization, nursing, custodial care, or a change in residence.
- (5) An emergency protective services order expires five business days after the day on which the court issues the order unless an appropriate party petitions for temporary guardianship pursuant to **Section 75-5-310** or the division files a new petition for an emergency services order.
- (6) If a petition for guardianship, or an additional protective services petition is filed within five business days after the day on which the court issues the original emergency protective services order, a court may extend the duration of the original order an additional 15 business days after the day on which the subsequent petition is filed to allow for a court hearing on the petition.
- (7) To implement an emergency order, the court may authorize forcible entry by a peace officer into the premises where the vulnerable adult may be found.

Amended by Chapter **176**, 2017 General Session

§ 62A-3-321. Petition for injunctive relief when caretaker refuses to allow services.

- (1) When a vulnerable adult is in need of protective services and the caretaker refuses to allow the provision of those services, the division may petition the court for injunctive relief prohibiting the caretaker from interfering with the provision of protective services.

- (2) The division's petition under **Subsection (1)** shall allege facts sufficient to show that the vulnerable adult is in need of protective services, that the vulnerable adult either consents or lacks capacity to consent to those services, and that the caretaker refuses to allow the provision of those services .
- (3) The court may, on appropriate findings and conclusions in accordance with **Rule 65A, Utah Rules of Civil Procedure**, issue an order enjoining the caretaker from interfering with the provision of protective services.
- (4) The petition under **Subsection (1)** may be joined with a petition under **Section 62A-3-320**.

Utah Criminal Code

§76-5-111

Utah Criminal Code

§ 76-5-111. Abuse, neglect, or exploitation of a vulnerable adult -- Penalties.

(1) As used in this section:

- (a) **"Abandonment"** means a knowing or intentional action or inaction, including desertion, by a person or entity acting as a caretaker for a vulnerable adult that leaves the vulnerable adult without the means or ability to obtain necessary food, clothing, shelter, or medical or other health care.
- (b) **"Abuse" means:**
 - (i) attempting to cause harm, intentionally or knowingly causing harm, or intentionally or knowingly placing another in fear of imminent harm;
 - (ii) causing physical injury by knowing or intentional acts or omissions;
 - (iii) unreasonable or inappropriate use of physical restraint, medication, or isolation that causes or is likely to cause harm to a vulnerable adult that is in conflict with a physician's orders or used as an unauthorized substitute for treatment, unless that conduct furthers the health and safety of the adult; or
 - (iv) deprivation of life-sustaining treatment, except:
 - (A) as provided in Title 75, Chapter 2, Part 11, Personal Choice and Living Will Act; or
 - (B) when informed consent, as defined in this section, has been obtained.
- (c) **"Business relationship"** means a relationship between two or more individuals or entities where there exists an oral or written agreement for the exchange of goods or services.
- (d) **"Caretaker"** means any person, entity, corporation, or public institution that assumes the responsibility to provide a vulnerable adult with care, food, shelter, clothing, supervision, medical or other health care, or other necessities. "Caretaker" includes a relative by blood or marriage, a household member, a person who is employed or who provides volunteer work, or a person who contracts or is under court order to provide care.
- (e) **"Deception" means:**
 - (i) a misrepresentation or concealment:
 - (A) of a material fact relating to services rendered, disposition of property, or use of property intended to benefit a vulnerable adult;
 - (B) of the terms of a contract or agreement entered into with a vulnerable adult; or
 - (C) relating to the existing or preexisting condition of any property involved in a contract or agreement entered into with a vulnerable adult; or
 - (ii) the use or employment of any misrepresentation, false pretense, or false promise in order to induce, encourage, or solicit a vulnerable adult to enter into a contract or agreement.

- (f) **"Elder adult"** means a person 65 years of age or older.
- (g) **"Endeavor"** means to attempt or try.
- (h) **"Exploitation"** means the offense described in **Subsection 4** or **Section 76-5b-202**.
- (i) **"Harm"** means pain, mental anguish, emotional distress, hurt, physical or psychological damage, physical injury, suffering, or distress inflicted knowingly or intentionally.
- (j) **"Informed consent"** means:
 - (i) a written expression by the person or authorized by the person, stating that the person fully understands the potential risks and benefits of the withdrawal of food, water, medication, medical services, shelter, cooling, heating, or other services necessary to maintain minimum physical or mental health, and that the person desires that the services be withdrawn. A written expression is valid only if the person is of sound mind when the consent is given, and the consent is witnessed by at least two individuals who do not benefit from the withdrawal of services; or
 - (ii) consent to withdraw food, water, medication, medical services, shelter, cooling, heating, or other services necessary to maintain minimum physical or mental health, as permitted by court order.
- (k) **"Intimidation"** means communication conveyed through verbal or nonverbal conduct which threatens deprivation of money, food, clothing, medicine, shelter, social interaction, supervision, health care, or companionship, or which threatens isolation or harm.
- (l) (i) **"Isolation"** means knowingly or intentionally preventing a vulnerable adult from having contact with another person by:
 - (A) preventing the vulnerable adult from receiving visitors, mail, or telephone calls, contrary to the express wishes of the vulnerable adult, including communicating to a visitor that the vulnerable adult is not present or does not want to meet with or talk to the visitor, knowing that communication to be false;
 - (B) physically restraining the vulnerable adult in order to prevent the vulnerable adult from meeting with a visitor; or

- (C) making false or misleading statements to the vulnerable adult in order to induce the vulnerable adult to refuse to receive communication from visitors or other family members.
- (ii) The term "isolation" does not include an act intended to protect the physical or mental welfare of the vulnerable adult or an act performed pursuant to the treatment plan or instructions of a physician or other professional advisor of the vulnerable adult.
- (m) **"Lacks capacity to consent"** means an impairment by reason of mental illness, developmental disability, organic brain disorder, physical illness or disability, chronic use of drugs, chronic intoxication, short-term memory loss, or other cause to the extent that a vulnerable adult lacks sufficient understanding of the nature or consequences of decisions concerning the adult's person or property.
- (n) **"Neglect" means:**
 - (i) failure of a caretaker to provide nutrition, clothing, shelter, supervision, personal care, or dental or other health care, or failure to provide protection from health and safety hazards or maltreatment;
 - (ii) failure of a caretaker to provide care to a vulnerable adult in a timely manner and with the degree of care that a reasonable person in a like position would exercise;
 - (iii) a pattern of conduct by a caretaker, without the vulnerable adult's informed consent, resulting in deprivation of food, water, medication, health care, shelter, cooling, heating, or other services necessary to maintain the vulnerable adult's well being;
 - (iv) intentional failure by a caretaker to carry out a prescribed treatment plan that results or could result in physical injury or physical harm; or
 - (v) abandonment by a caretaker.
- (o) **"Physical injury"** includes damage to any bodily tissue caused by nontherapeutic conduct, to the extent that the tissue must undergo a healing process in order to be restored to a sound and healthy condition, or damage to any bodily tissue to the extent that the tissue cannot be restored to a sound and healthy condition. "Physical injury" includes skin bruising, a dislocation, physical pain, illness, impairment of physical function, a pressure sore, bleeding, malnutrition, dehydration, a burn, a bone fracture, a subdural hematoma, soft tissue swelling, injury to any internal organ, or any other physical condition that imperils the health or welfare of the vulnerable adult and is not a serious physical injury as defined in this section.

- (p) **"Position of trust and confidence"** means the position of a person who:
 - (i) is a parent, spouse, adult child, or other relative by blood or marriage of vulnerable adult;
 - (ii) is a joint tenant or tenant in common with a vulnerable adult;
 - (iii) has a legal or fiduciary relationship with a vulnerable adult, including a court-appointed or voluntary guardian, trustee, attorney, or conservator; or
 - (iv) is a caretaker of a vulnerable adult.

- (q) **"Serious physical injury"** means any physical injury or set of physical injuries that:
 - (i) seriously impairs a vulnerable adult's health;
 - (ii) was caused by use of a dangerous weapon as defined in Section 76-1-601;
 - (iii) involves physical torture or causes serious emotional harm to a vulnerable adult; or
 - (iv) creates a reasonable risk of death.

- (r) **"Sexual exploitation of a vulnerable adult"** means the offense described in **Part 2, Section 76-5b-202**

- (s) **"Undue influence"** occurs when a person uses the person's role, relationship, or power to exploit, or knowingly assist or cause another to exploit, the trust, dependency, or fear of a vulnerable adult, or uses the person's role, relationship, or power to gain control deceptively over the decision making of the vulnerable adult.

- (t) **"Vulnerable adult"** means an elder adult, or an adult 18 years of age or older who has a mental or physical impairment which substantially affects that person's ability to:
 - (i) provide personal protection;
 - (ii) provide necessities such as food, shelter, clothing, or medical or other health care;
 - (iii) obtain services necessary for health, safety, or welfare;
 - (iv) carry out the activities of daily living;
 - (v) manage the adult's own resources; or
 - (vi) comprehend the nature and consequences of remaining in a situation of abuse, neglect, or exploitation.

- (2) Under any circumstances likely to produce death or serious physical injury, any person, including a caretaker, who causes a vulnerable adult to suffer serious physical injury or, having the care or custody of a vulnerable adult, causes or permits that adult's person or health to be injured, or causes or permits a vulnerable adult to be placed in a situation where the adult's person or health is endangered, is guilty of the offense of aggravated abuse of a vulnerable adult as follows:
 - (a) if done intentionally or knowingly, the offense is a second degree felony;
 - (b) if done recklessly, the offense is third degree felony; and

- (c) if done with criminal negligence, the offense is a class A misdemeanor.
- (3) Under circumstances other than those likely to produce death or serious physical injury any person, including a caretaker, who causes a vulnerable adult to suffer harm, abuse, or neglect; or, having the care or custody of a vulnerable adult, causes or permits that adult's person or health to be injured, abused, or neglected, or causes or permits a vulnerable adult to be placed in a situation where the adult's person or health is endangered, is guilty of the offense of abuse of a vulnerable adult as follows:
- (a) if done intentionally or knowingly, the offense is a class A misdemeanor;
 - (b) if done recklessly, the offense is a class B misdemeanor; and
 - (c) if done with criminal negligence, the offense is a class C misdemeanor.
- (4) (a) A person commits the offense of exploitation of a vulnerable adult when the person:
- (i) is in a position of trust and confidence, or has a business relationship, with the vulnerable adult or has undue influence over the vulnerable adult and knowingly, by deception or intimidation, obtains or uses, or endeavors to obtain or use, the vulnerable adult's funds, credit, assets, or other property with the intent to temporarily or permanently deprive the vulnerable adult of the use, benefit, or possession of the adult's property, for the benefit of someone other than the vulnerable adult;
 - (ii) knows or should know that the vulnerable adult lacks the capacity to consent, and obtains or uses, or endeavors to obtain or use, or assists another in obtaining or using or endeavoring to obtain or use, the vulnerable adult's funds, assets, or property with the intent to temporarily or permanently deprive the vulnerable adult of the use, benefit, or possession of his property for the benefit of someone other than the vulnerable adult;
 - (iii) unjustly or improperly uses or manages the resources of a vulnerable adult for the profit or advantage of someone other than the vulnerable adult;
 - (iv) unjustly or improperly uses a vulnerable adult's power of attorney or guardianship for the profit or advantage of someone other than the vulnerable adult;
 - (v) involves a vulnerable adult who lacks the capacity to consent in the facilitation or furtherance of any criminal activity; or
 - (vi) commits sexual exploitation of a vulnerable adult.
- (b) A person is guilty of the offense of exploitation of a vulnerable adult as follows:
- (i) if done intentionally or knowingly and the aggregate value of the resources used or the profit made is or exceeds \$5,000, the offense is a second degree felony;
 - (ii) if done intentionally or knowingly and the aggregate value of the resources used or the profit made is less than \$5,000 or cannot be determined, the offense is a third degree felony;
 - (iii) if done recklessly, the offense is a class A misdemeanor; or
 - (iv) if done with criminal negligence, the offense is a class B misdemeanor.

- (5) It does not constitute a defense to a prosecution for any violation of this section that the accused did not know the age of the victim.
- (6) An adult is not considered abused, neglected, or a vulnerable adult for the reason that the adult has chosen to rely solely upon religious, nonmedical forms of healing in lieu of medical care.

Administrative Rules

Utah Administrative Code

The Utah Administrative Code is the body of all effective administrative rules as compiled and organized by the Office of Administrative Rules (see Subsection 63G-3-102(5); see also Sections 63G-3-701 and 702).

R510. Human Services, Aging and Adult Services.

Rule R510-302. Adult Protective Services.

As in effect on August 1, 2017

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R510-302-1. Purpose.

This rule clarifies the responsibilities of Adult Protective Services.

R510-302-2. Authority.

This rule is authorized by Section 62A-3-302.

R510-302-3. Principles.

(1) Adult Protective Services shall respect the lifestyle that is knowingly and voluntarily chosen by the vulnerable adult.

(2) A vulnerable adult with capacity to consent has the right to self-determination.

(3) All services provided are voluntary unless court ordered.

(4) All services provided should be the least restrictive possible.

(5) All services provided shall be community-based unless community-based services are unavailable.

(6) Adult Protective Services shall encourage a vulnerable adult's family and community to take responsibility for providing necessary services.

(7) Adult Protective Services shall coordinate and cooperate with other agencies to protect vulnerable adults.

(8) Adult Protective Services shall treat vulnerable adults and others in a courteous, dignified and professional manner.

R510-302-4. Definitions.

(1) All definitions found in Title 62A Chapter 3 are incorporated by reference.

(2) Activities of Daily Living means the ability to: take a full body bath or shower, including transfer in and out of the bath or shower; tend to personal hygiene needs, including care of teeth, dentures, shaving, and hair care; put on, fasten and take off all clothing, and select appropriate attire; walk without supervision or cues, including using a walker or cane; use steps or ramps; use toilet or commode, including transferring on and off toilet, cleansing self, changing pads, and caring for colostomy or catheter in appropriate manner; transfer without supervision or devices in and out of a bed or chair; and the ability to feed oneself, prepare food, drink or use necessary adaptive devices.

(2a) Instrumental Activities of Daily Living (ADL's) means the core life activities of independent living, including using the telephone, managing money, preparing meals, doing housework, remembering to take medications, providing for one's necessities, and obtaining services.

(3) Conservator means an individual or agency appointed by a court in accordance with Section 75-5-401, et seq.

(4) Guardian means an individual or agency appointed by a court in accordance with Section 75-5-303, et seq.

(5) Incapacitated Person is as defined in Section 75-1-201(18).

(6) Intentionally is as defined in Section 76-2-103(1).

(7) Knowingly is as defined in Section 76-2-103(2).

(8) Lifestyle Choice means a knowing and voluntary choice to live a certain way, including a non-conventional way, by a person who has capacity to make that choice.

(9) Limited Capacity means that an adult person's ability to understand, communicate, make decisions regarding the nature and consequences the person's life or property is limited in one or more, but not all, functional areas, or during identified times of day, due to a mental illness, developmental disability, organic brain disorder, physical illness or disability, chronic use of drugs, chronic intoxication, short-term memory loss, or other cause.

(10) Long-term care facility is as defined in Section 62A-3-202.

(11) Protective intervention funding means payments made to the vulnerable adult, family, or caregiver or other provider that will alleviate or resolve a protective need.

(12) Protective Needs means factors identified by the APS Protective Needs Assessment that pose significant risk for, or are the result of Abuse, Neglect or Exploitation of a vulnerable adult.

(13) Protective Needs Assessment means an assessment of a vulnerable adult's impairments and alleged risk factors for Abuse, Neglect or Exploitation that are found to be present in that APS case investigation.

(14) Protective Supervision means an APS service offered to reduce or resolve a vulnerable adult's protective need.

(15) Recklessly is as defined in Section 76-2-103(3).

(16) Respite Care means a time-limited period of relief from care giving responsibilities paid to a respite care provider or individual from Protective Intervention Funds.

(17) Service Plan means a document created by the APS caseworker for an approved Short-term Service Case that includes a goal, objectives, methods, and progress reviews to resolve the protective needs identified in an Adult Protective Services investigation, and which implements recommendations of the case review committee.

(18) Short-term protective services include but are not limited to crisis intervention, emergency shelter, protective supervision, respite care, supported living services, or short-term intervention funding.

(19) Short-Term intervention funding means short-term payments made to the vulnerable adult, family, or caregiver or other provider, during a short-term service case for goods or services other than for Respite Care or Supported Living, that will alleviate or resolve a protective need.

(20) Supported Living means short-term payments made to individuals or providers that enable the vulnerable adult to remain in his or her own home or in the home of a relative.

R510-302-6. Adult Protective Services Intake.

(1) Referrals may be submitted to the APS Intake Office in any format from any person who has reason to believe that a vulnerable adult has been abused, neglected, or exploited in the State of Utah.

(2) All referrals shall be evaluated by APS Intake to determine whether APS shall investigate the allegation.

(3) APS shall accept all referrals with allegations of abuse, neglect, or exploitation of a vulnerable adult in the State of Utah except as follows:

(a) when the referral does not involve an allegation that a vulnerable adult may have been or is being abused, neglected or exploited.

(b) when the referral does not identify a current abuse, neglect or exploitation but anticipates that abuse, neglect or exploitation may occur.

(c) when the referral involves a vulnerable adult on an Indian reservation, a written agreement between APS and tribal authorities granting APS authority to investigate must be in effect or the referral shall be forwarded by Intake to federal or tribal authorities.

(4) APS shall notify the Department of Health and the Local Long-term Care Ombudsman when a referral involves a long-term care facility.

(5) APS may submit a referral that involves a Division employee or other potential conflict of interest to the DHS Office of Services Review for review.

R510-302-7. Investigation.

(1) The assigned investigator shall initiate the investigation and determine whether:

(a) there is an allegation of abuse, neglect or exploitation;

(b) the alleged victim is a vulnerable adult;

(c) the alleged victim has the capacity to consent;

(d) the alleged victim has a legal guardian or conservator;

(e) an emergency exists; and

(f) the extent of the alleged victim's mental or physical impairment.

(2) The investigator shall make a face-to-face visit with the alleged victim.

(a) The investigator shall seek the consent of the vulnerable adult to provide services if the vulnerable adult has the capacity to consent.

(b) The investigator shall seek the consent of the vulnerable adult's legal guardian to provide services if the vulnerable adult does not have the capacity to consent.

(3) The investigator may not enter the home of a vulnerable adult unless the vulnerable adult, legal guardian, or caretaker consents, except when the investigator has reason to believe exigent circumstances exist to protect the vulnerable adult from imminent harm.

(4) The investigator shall interview the alleged perpetrator unless:

(a) specifically requested not to do so by law enforcement officers in order to avoid impeding an ongoing criminal investigation or proceeding;

(b) interviewing the alleged perpetrator would likely endanger any person;

(c) prior to interviewing the alleged perpetrator, the allegation is found to be without merit;

(d) APS is unable to locate the victim;

(e) the alleged victim died before the investigation started;

(f) the alleged perpetrator is unknown; or

(g) the alleged perpetrator has refused the interview.

(5) When the investigator has reason to believe any hazardous waste or illegal drugs may be located at an investigative site, the investigator will contact law enforcement agencies and not enter the site until the local health department determines it is safe to do so. The law enforcement agencies may be asked:

(a) to assess and secure a vulnerable adult's immediate safety,

(b) facilitate the vulnerable adult's exit from the lab site,

(c) and arrange for emergency transportation to the hospital for decontamination.

(6) The investigator may obtain an administrative subpoena when the following circumstances apply:

(a) the vulnerable adult lacks the capacity to consent; or

(b) the vulnerable adult's legal guardian refuses to consent; or

(c) the custodian of the records or items pertinent to an investigation refuses to allow access to those records or items without a subpoena; or

(d) the information sought is necessary to investigate allegations of abuse, neglect or exploitation or to protect the alleged victim.

(7) An administrative subpoena form:

(a) shall include a list that specifically identifies the documents or objects being subpoenaed;

(b) is not valid until signed by the Director or Regional Director.

(8) The investigator shall document all items received as a result of the subpoena.

(9) the investigator shall evaluate all information obtained during the investigation and determine:

(a) whether each allegation of abuse, neglect and exploitation identified during the investigation is supported, inconclusive, or without merit; and

(c) law enforcement shall be contacted to coordinate or assist on an investigation, if the investigation indicates that criminal abuse, neglect or exploitation may have occurred or the safety of the any person is endangered.

(d) if an unmet (protective) need exists:

(i) the investigator may refer the vulnerable adult and the vulnerable adult's legal guardian to available community resources and services to resolve the protective need;

(ii) the investigator or Supervisor may request a review by the Case Review Committee to determine if Short-Term Services may help to resolve the protective need;

(iii) the investigator may make a referral to the Office of Public Guardian;

(iv) the investigator may provide crisis intervention to assist the vulnerable adult in obtaining services or benefits as it relates to the abuse, neglect or exploitation;

(v) the investigator may contact the family of a vulnerable adult who lacks capacity and inform the family that the vulnerable adult requires alternate living arrangements in an environment that is safe and meets the vulnerable adult's protective needs;

(vi) the investigator may provide Protective Intervention Funds at the sole discretion of APS. These funds may be made available to the vulnerable adult, family caregiver or other provider to alleviate or resolve a protective need, and must directly benefit the vulnerable adult;

(vii) the investigator may provide one-time payments for medications, medical treatment, or medical equipment or supplies not covered by insurance or other medical coverage; transportation; minor repairs or modifications; rent; food; or clothing, or other needs that directly benefit the vulnerable adult to alleviate or resolve a protective need; or

(viii) the investigator may provide payments for a service provider or individual for approved Short-term services for Respite care, Supported living, or for short-term intervention funds.

R510-302-8 Settlement Agreements.

(1) The Division may enter into a settlement agreement with the person who has received a notification of agency action letter pursuant to 62A-3-311.5.

(2) No settlement agreement shall be entered into once the Supported finding has been upheld by a court of competent jurisdiction.

R510-302-9. Eligibility.

(1) There are no income eligibility requirements for an APS investigation of allegations of abuse, neglect, or exploitation.

(2) There are no eligibility requirements in order to receive short-term protective supervision services.

(3) There are no eligibility requirements in order to receive Protective Intervention Funds to resolve a situational crisis or an immediate protective need.

(4) A vulnerable adult shall meet income eligibility requirements in order to receive short-term protective services other than protective supervision services, including respite care, supported living, short-term intervention funding, and other services approved by the APS Director or regional director.

(a) For purposes of eligibility for short-term protective services, "family" includes an adult, the adult's spouse, and their natural children under age 18, who are residing in the same household.

(b) A person living under the care of someone other than their spouse is considered a one-person family.

(c) In determining whether a vulnerable adult meets income eligibility requirements for short-term protective services, family assets shall be disclosed and evaluated.

(i) Family assets include the fair market value of stocks, bonds, certificates of deposit, notes, savings and checking accounts, inheritance, capital gains, or gifts, which can be readily converted to cash.

(ii) A client's income and deductions will be used to determine the client's adjusted gross income to determine the client's eligibility status.

(iii) Monthly gross income includes the total monthly income received by an individual from earnings, military pay, commissions, tips, piece-rate payments, and cash bonuses; net income from self-employment; Social Security Pensions, SSI, Survivor's Benefits, and Permanent Disability Insurance payments; dividends, interest, income from estates or trusts, net rental income or royalties, net income from rental of property, receipts from boarders or lodgers; pensions, annuities; unemployment compensation; strike benefits; worker's compensation; alimony, child support, money

received as specified in a divorce or support decree; Veterans' pensions or subsistence allowances; and other regular (three out of six months) financial assistance.

(iv) Monthly gross income does not include per capita payments to or funds held in trust for any individual in satisfaction of a judgment of the Indian Claims Commission or the Court of Claims; net proceeds received from the sale of a primary residence or an automobile; money borrowed; insurance payments in excess of incurred costs that must be paid from the settlement; the value of the coupon allotment under the Food Stamp Act; the value of USDA donated foods; the value of supplemental food assistance under the Child Nutrition Act of 1966 and the special food service program for children under the National School Lunch Act; any payment received under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970; earnings of a child (under 18 years of age) residing in the home; payments for energy assistance and weatherization HEAT program; housing subsidies paid by the Federal government; payments or grants received due to natural disaster; educational loans, grants, or scholarships to any undergraduate student for educational purposes that is made or insured by the U.S. Commissioner of Education (BEOG; SEOG; NDSL; Guaranteed Student Loans; SSIG; and PELL Grants); payments to participate in a service learning program, such as College Work-Study or University Year for Action; and that portion of any other loan, grant, or scholarship which is conditioned upon school attendance, actually used for tuition, books, fees, equipment, special clothing needs, transportation to and from the school, and the child care services necessary for school attendance.

(v) The expenses that shall be deducted in determining adjusted gross income are limited to medical expenses (including Medicaid spend-down and insurance); storage expenses; child support paid, including money paid for house payments, rent, etc. as specified in a divorce or support decree; the dollar amount of first mortgage/rental payment over 25% of monthly countable income (not counted for Foster Care); and fees paid for other programs and protective services.

(vi) The sum of all family assets shall be divided by the number of family members, and if that amount exceeds \$4,000 per family member, then the value over \$4,000 shall be prorated over twelve months, and the resulting amount shall be added to the monthly countable income.

(vii) Eligibility status must be verified annually and within 30 days of any family member's increase in assets.

(viii) A client's adjusted gross income for income tax purposes is not the same as the adjusted gross income for service eligibility purposes.

(ix) All family assets and expenses shall be supported with current bank records, check stubs, and other verifiable records. Documentation must clearly indicate the name of the applicable family member.

R510-302-10. Protective Need Intervention.

(1) An Investigator may request Protective Intervention Funding for an emergency shelter placement to alleviate the vulnerable adult's protective need. Emergency shelter placements may be made for up to 30 days within a twelve-month period for a vulnerable adult who has been abused, neglected, or exploited only if:

- (a) the vulnerable adult's circumstances require immediate alternate living arrangements in a safe environment;
- (b) the vulnerable adult or legal guardian consents to the emergency shelter placement or a court order authorizes the placement;
- (c) the vulnerable adult does not meet the eligibility requirements for shelter under the Family Violence program; and
- (d) the emergency shelter has all required current licenses and certifications.

R510-302-11. Short-Term Intervention.

(1) Short-term protective services may only be provided to a vulnerable adult who is the victim of abuse, neglect or exploitation, and in accordance with the terms of a service plan consented to and signed by the vulnerable adult or the vulnerable adult's legal guardian, or pursuant to a court order. An updated service plan shall be signed at each case review.

(2) A short-term services Case Review Committee shall monitor and review short-term services. The Case Review Committee:

(a) shall consist of the primary worker, supervisor or designee, and two other region workers. The Committee may include other APS and community or agency individuals when determined necessary by the Case Review Committee.

(b) shall oversee the progress made towards resolution of the protective need.

(c) may recommend that short-term services are initiated, extended, or terminated.

(d) may recommend community referrals or alternative actions.

(3) The Case Supervisor may approve or deny Short-Term Services recommended by the Case Review Committee.

(4) Short-Term Services may only be provided under the following conditions:

(a) Short-term services are voluntary and shall not be implemented without the written consent of the vulnerable adult or the vulnerable adult's legal representative.

(b) Every short-term service case shall include a protective supervision service.

(c) Protective Intervention funds for Short-term services shall not be disbursed without the approval of the APS supervisor or regional director.

(d) Respite Care funds may not be used for caring for other members of the family, performing extensive household tasks, or transportation.

(e) Respite Care may be provided in the vulnerable adult's home, a caregiver's home, or in a licensed facility.

(f) Supported Living Payments may be made to providers to enable the vulnerable adult to remain in his own home or in the home of a relative, and may include short-term supervision, transportation, assistance with shopping, training or assistance with activities of daily living.

(g) Payments for Short-Term Services may not be made until a case has been approved by the Case Review Committee and Services voluntarily agreed to in writing by the vulnerable adult, his or her guardian, or approved by court order.

R510-302-12. Protective Payee Services.

(1) Adult Protective Services shall not provide payee services.

R510-302-13. Termination of Short-Term Protective Services.

(1) A vulnerable adult has no entitlement or right to short-term protective services from APS.

(2) Protective Services may be terminated by the vulnerable adult or APS at any time.

(3) Protective Services shall be terminated when:

(a) the vulnerable adult is no longer in immediate danger of abuse, neglect or exploitation;

(b) a vulnerable adult who voluntarily accepted services requests that those services be terminated;

(c) recommended by the Case Review Committee;

(d) the court terminates an order requiring APS to provide services;

(e) the vulnerable adult is receiving protective services from other persons or agencies;

(f) the vulnerable adult's behavior is abusive or violent and constitutes a threat;

(g) the vulnerable adult no longer meets the eligibility requirements for services;

(h) the vulnerable adult refuses to comply with the service plan;

(i) there is insufficient funding to pay for the service;

(j) the vulnerable adult moves out of State; or

(k) the vulnerable adult dies. APS shall complete a Deceased Client Report form in accordance with DHS policy 05-02.

(4) When APS terminates Short-Term protective services, a letter shall be sent to the vulnerable adult stating the case is going to be terminated and the reason for termination.

(a) The letter shall state that termination becomes effective 10 days from the date the letter was sent unless the vulnerable adult requests an administrative review of the reason for the termination and to decide if the services should be reinstated or alternative services may be available.

KEY

vulnerable adults, adult protective services investigation, shelter care facilities, short-term services

Date of Enactment or Last Substantive Amendment

December 21, 2012

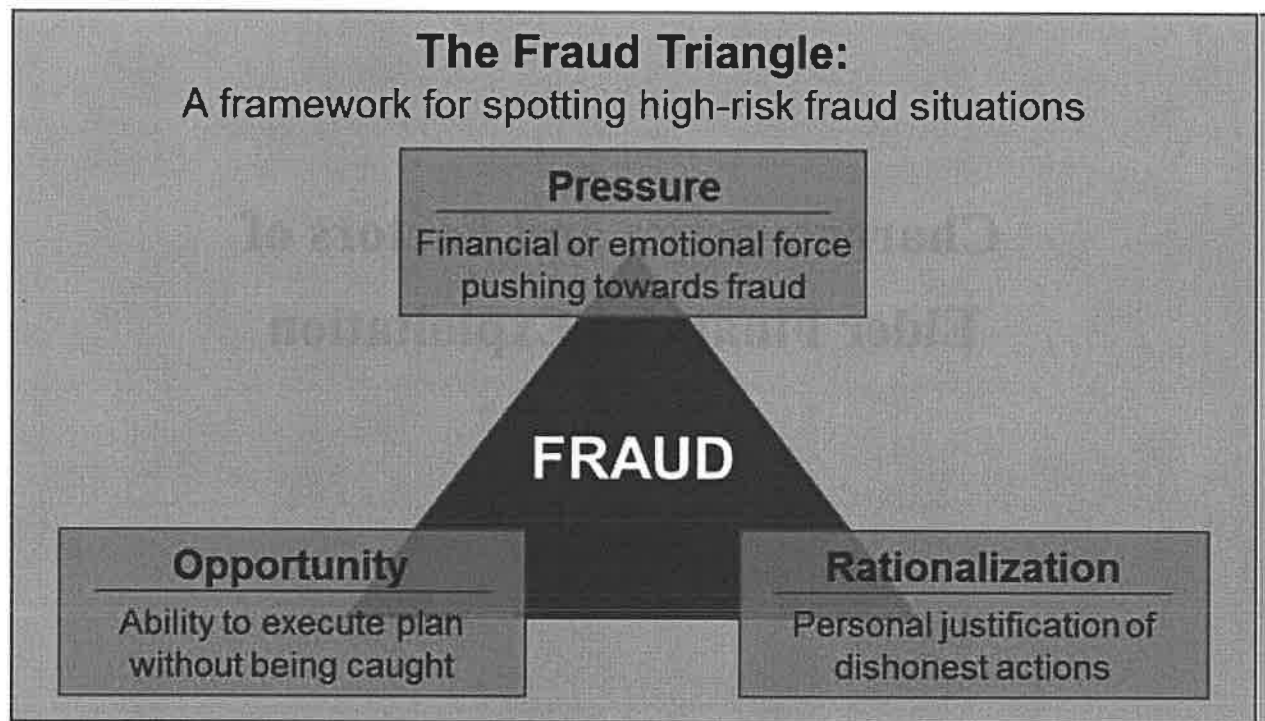
Notice of Continuation

June 30, 2017

Authorizing, Implemented, or Interpreted Law

62A-3-301 et seq.

Characteristics and Factors of Elder Financial Exploitation



<http://controls.ucmerced.edu/Pages/Fraud-Triangle.aspx>

Elder exploitation is very much associated with the Fraud Triangle and includes the three elements of a crime:

Pressure: (Motive, Incentive) Financial greed, employment stress, wants vs needs, want it now generation, drug/gambling addiction, keep up with the neighbor next door or keep up with friends or social circles etc.

Opportunity: (Ineffective or weak controls) The lower the risk of being caught, the more likely fraud will occur.

****Important point: One cannot commit a crime if an opportunity does not exist.**

Rationalization: Before a crime is committed the perpetrator formulates a morally acceptable justification for their unethical/fraudulent behavior. This allows a person to justify or excuse their actions. Some people are susceptible to rationalization due to their lack of personal integrity and moral standards.

Undue Influence: Individuals who are stronger and more powerful (may be family members) influence others to do things they would not otherwise do using various techniques and manipulations over time

Tactics for Undue Influence

- Isolating victims
- Controlling the flow of information to keep victims
- Emotionally manipulating the victim inducing fear, anxiety, agitation, paranoia and suspiciousness
- Relationship poisoning
- Encouraging dependency
- Actively procuring finances and financial instruments

Lisa Nerenberg, Literature Review on Undue Influence;, February 21, 2010 – California Elder Justice Coalition

Assessment for Undue Influence

- Influence so great it overpowers the decedent's free will and prevents them from doing as they please with their property
- "Undue" influence entered upon the decedent must be of such a degree that it overpowered the decedent's free choice and caused them to act against their own free will and in accordance with the will of the person who influenced them
- Influence exerted may be force, threats, flattery, persuasion, fraud, misrepresentation, physical coercion and moral coercion
- A will that results from undue influence is a will the decedent would not otherwise have made. It disposes of the decedent's property in a manner different from the disposition the decedent would have made if they had been free from such undue influence.

Peter A. Lichteberg, Ph.D, ABPP

Victim and Perpetrator Characteristics

Important Fact: Victims and/or perpetrators cannot be identified by any one characteristic.

There are, however several risk factors making elders potential targets for victimization.

- Trusting, easily pressured, manipulated and convinced
- May be limited or lacking capacity/understanding (dementia)
- Are at risk for social isolation, lonely and often rely on others for information
- Love for family - want to leave legacy/inheritance
- Fear (placement in care facility, withdrawal of affection, isolation)



Perpetrators have one characteristic: Opportunity

They can be

- Family
- Trusted persons
- Caregivers
- Faith leaders
- Guardian/Conservator
- Power of Attorney
- Financial Advisors
- Strangers

In reality anyone can be a perpetrator

Roles in Investigation

Role of Adult Protective Services



Adult Protective Services (APS) is a state program within the Department of Human Services. It is responsible for investigation of reports of abuse, neglect and exploitation of vulnerable adults. Investigations may include any/all the same elements of a law enforcement investigation; however APS does not have the power to prosecute a perpetrator.

APS is available in every state and authorized under the following:

Federal Law:

Social Security Act, 42 USC 1397(3) which encourages the State to furnish services directed at the goal of “preventing or remedying neglect, abuse, or exploitation of children and adults unable to protect their own interests.....”

The Older Americans Act (42 USC 3058i)

Utah Code §62A-3-301

Role of Law Enforcement

Law Enforcement is the first responder for allegations involving abuse, neglect or exploitation and must handle any emergent situations.

- Receives complaints
- Takes witness statements
- Gathers pertinent documents (including digital evidence)
- Takes photos of injuries, condition of the home, living circumstances, medications, etc.
- Describes the mental and physical condition of the victim
- May arrest
- Refers to other appropriate agencies (APS and/or MFCU)

Role of Medicaid Fraud Control Unit (MFCU)

The Medicaid Fraud Control Unit, Utah Attorney General's Office can further investigate and prosecute cases if the allegations occur in nursing homes, assisted living facilities, group homes or other "board and care" facilities. They may be able to protect victims from further abuse and follow through on restitution for the victims.

They are willing to assist with your investigation and provide guidance regarding investigative techniques.

Role of Prosecutor

It is the duty of the prosecutor to present a case and prove that something happened **Beyond a Reasonable Doubt**.

Prosecutors will need to prove there was a vulnerable adult who suffered abuse, neglect, or exploitation based on the state statute.

They can and should use any evidence gathered by local law enforcement, APS, and their own investigators.

APS can provide critical components of the case by providing evidence obtained through a thorough investigation.

Evidence may include:

- Timelines
- Identification of key witnesses/victim(s)/perpetrator(s)
- Outline of loss amount/restitution
- Copies of case file

Investigating the Case

First Things First....

Your case begins with preparation

- Read the case narrative
- Check for prior cases
- Make your first call
- Make your first visit
- Conduct the initial interview
- Determine what documents are needed
- Request and collect documents
- Make collateral calls
- More visits
- More interviews

All this will provide the building blocks or evidence in your case. **Make sure you document your hard work!** Remember, if you don't document it – it didn't happen.

Making the first visit - initial interview

Interviewing Alleged Victims

Build rapport with the alleged victim. Do not immediately launch into questions about the allegation. Realize this is most likely difficult for them. As you progress you will feel more comfortable asking for information. Use your instinct and investigative skills to know when and how to approach each subject.

If the allegations are specific, you need only ask questions to clarify details relative to the specific allegations. If the allegations are vague, it is important to obtain more financial data and personal information.

Know your victim

- Observe the alleged victim, living conditions, mobility,
- Determine capacity (Do they have the ability to know the consequences of their actions)
- Talk with them about their lifestyle, preferences and dislikes
- Determine their skill level as it pertains to finances and technology (Bill pay, mobile banking, on line shopping, funds, transfers, ATMs)
- Are they in a care facility or do they have home care
- Who is involved (What are their roles?)
- Do they have estate plan
- What is their average income
- What are their expenses, spending habits (This is necessary to evaluate the victim's financial records and be able to correctly identify any transaction(s) that would be the result of financial exploitation)

Sample Victim Interview Questions

Why do you think there is some concern that you are being exploited?

Are you missing any cash, valuables or personal property?

Is anyone helping you to pick up or read your mail?

Do you know the current status of your accounts?

Have you recently made any large withdrawals from any of your accounts?

Has anyone recently asked you for money?

Do you feel pressured, scared, or obligated in any way to give someone money or to give away your personal items?

Have you given in to any of these pressures?

Has anyone recently told you of their financial struggles or hardship?

Does anyone help you with your finances?

What exactly was this person asked to do for you?

What access does this person have to your financial accounts?

Does this person have in their possession any of your bank checks, credit cards or debit cards?

Have you given anyone permission to move or take money from your financial accounts?

Have you given anyone access to your checkbook, credit card, debit card, PIN number etc.?

Have you given anyone access to your financial accounts?

Clarify which financial account(s) have been compromised:

Identify the financial institutions (If unknown, a credit report may help to identify accounts)

Identify the accounts (checking, savings, CDs, annuities, investments, IRA etc.)

How are the accounts named (Individual, joint, conservator, POA, trust etc.)

Clarify the period of time for which the alleged exploitation may have taken place. Is it still occurring?

Has the victim alerted their financial institution of the possible exploitation?

If not, they should do so. The institution may open their own investigation and can be helpful to the alleged victim in stopping the fraudulent activity. It will also be helpful to APS for gathering documents and information.

Obtain a good understanding of the victim's lifestyle and spending habits.

What does the victim's normal spending look like?

What bills or expenses are paid on a regular basis? (mortgage/rent, phone, house cleaning, yard work, medical insurance, vehicle, personal care, credit cards etc.)

How do these bills get paid? Anyone helping? Who and how? (autopay, check, phone, card)

Other expenses? (auto, gas, home maintenance and repair, gifting, donations, entertainment, etc.)

How are these paid? (credit card, debit card, check)

Does the alleged victim drive?

Do they do their own shopping?

Has the alleged victim made any unusual or isolated purchases recently? (new furniture, vehicle)

Has anything in the alleged victim's life changed recently that has impacted their finances?

Sample Victim Interview Questions cont.

Observe the victim and the residence for clues for ?

Do they have a smartphone?

Do they engage in mobile banking?

Do they use the internet or phone to make purchases? (Amazon, Overstock, QVC, HSN, etc.)

Do they use ATMs?

Do they use credit cards and/or debit cards?

Have they recently used a cashiers check, money order, or wired money?

Anyone else living in the home?

Whom and the circumstances under which they are staying?

Do they contribute to the household expenses?

This list of questions is not inclusive and should be used only as a tool to encourage a comprehensive line of questioning.

Potential Documentary Evidence

Many of these documents will not be able to be obtained upon the first visit, however all efforts should be made to get as much information as possible to obtain the documents. All subsequent interviews, collateral calls and visits will provide building blocks of more information.

- Anything that shows movement for the funds in question
- Financial Records
 - Banking records
 - Statements of activity for _____ dated from _____ to _____
 - All Accounts
 - Checking, Savings, Money market, CDs, Investments
 - Credit or loan accounts
 - Signature cards and change cards
 - Items of Deposit
 - Items of Withdrawal
 - Cancelled checks
 - Money orders, Cashiers checks
 - Account notes
- Investment records
- Credit card statements
- Other billing statements
- Receipts
- Enforceable contracts
- Other supporting documents (notes, emails, texts, pictures, etc.)

Potential Scene Evidence

- Bank and investment statements
- Checkbooks, registers
- Bills, past due notices (utilities, credit cards)
- Medical records and supplies (containers, receipts)
- Prescriptions and over-the-counter medications
- Photographs care directive.
- Journals, calendars, letters of victim or alleged perpetrator
- Computers, mobile phones, (emails, text, photos)

If you don't ask for it, you probably won't get it

Interviewing Alleged Perpetrators

Remember the alleged perpetrator may be nervous and/or defensive. No one wants to be questioned about something they did wrong or inappropriately and some will make that really clear. Make sure you have as much information as possible about the allegations before going into the interview. As with the victim interview you may want to spend a few minutes building rapport before you address the allegations.

In addition, if you think there may be safety concerns consult your supervisor for guidance.

Use your instinct and investigative skills to develop questions specific to each case.

Know your alleged perpetrator as much as possible

- What is their role
 - How and when did they obtain this role
 - Establish their knowledge level of alleged victim's capacity
 - Ask for any documents or information that may be helpful

Sample Alleged Perpetrator Questions

Why do you think there are concerns about your involvement in _____ finances?

How did you get involved in this situation? Why you?

Is there anyone else involved?

What are the victim's sources of income?

Where does the victim bank?

Who or who else is involved with the victim's finances?

Where are the victim's financial accounts?

Who has access to the accounts?

How is the alleged victim's account named?

(i.e. single, joint, POA, trust, representative payee)?

Do you use any of your own personal accounts while assisting the victim with their finances?

Have you ever used the victim's credit or debit card(s)?

Have you ever used the alleged victim's funds for your personal use?

Have you ever withdrawn cash from the alleged victim's account?

Do you have any of the alleged victim's mail or financial documents in your possession?

(i.e. statements, checks, credit card, debit card, etc.)?

Are you now or have you been named in financial/estate planning documents?

Do you have copies of those documents?

This list of questions is not inclusive and should be used only as a tool to encourage a comprehensive line of questioning.

Possible Evidence to Prove Exploitation

There are other resources that may be useful in your case such as:

- Anything the victim or involved parties are willing to provide
- Credit reports
- Accurant (old Lexus Nexis – APS version of CLEAR)
 - Public records database (address, property information, known associates, vehicles, cell phones etc.)
- FinCen – US Dept. of the Treasury Financial Crimes Enforcement Unit
 - SAR – Suspicious Activity Report
 - CTR – Cash transaction report
- Estate Planning Documents –
 - Power of Attorney (POA)
 - Who has the authority to act – Scope of authority
 - Is overreach or abuse of power evident
 - Most POA have some version of language that state whatever is done should be in the best interest of the person for whom the document represents. Whoever is “acting” holds a “fiduciary” responsibility
 - POA grants various levels of power and limitations
 - Limited
Gives power to act for a very limited purpose
 - General
Gives comprehensive power. Generally grants all powers and rights that you would have yourself. Is void upon incapacity or death
 - Durable
Can be general or limited in scope. Remains in effect after incapacitation but becomes void upon death
 - Springing
“Springs” into action upon a certain time or occurrence in your life such as incapacitation.
 - Trust
 - Predetermined plans for the benefit of the beneficiaries. Similar to a Will but much more; heavy detailed asset distribution. Avoids probate and reduces taxes. Identify Acting Trustee/Successor Trustee/Addendums
 - Last Will & Testament
 - Defines final wishes pertaining to your possessions and dependents. It includes asset distribution, appointment of a Guardian for minor children, may set aside funds for pets, charities etc. Goes into effect only after death
 - Guardian / Conservatorship
 - Guardian is a person responsible for decisions about care provisions and living arrangements of the ward.
 - Conservator is charged with the ward’s property and financial affairs

Possible Evidence to Prove Exploitation cont.

- Real Property Documents
 - Anything that shows movement for the real property in question
 - Real Property Records (County Recorder's office)
 - Deeds
 - Establish current ownership/past ownership
 - Who's who – Grantor – Grantee
 - Chain of Conveyance
 - Liens
 - Lis pen-dens or affidavits of equitable interest
 - Warranty Deed
 - Transfers property from one person to another. Grantor "warranties" that he is rightful owner, that he holds legal title and has rights to transfer title
 - Trust Deed
 - Legal title is transferred to a Trustee. Trustee holds the title as security until the loan is satisfied. Most common with traditional home mortgages
 - Quit Claim Deed
 - Grantor transfers his interests in the property to another person. This does not create any warranties on the title. Most common when moving property among family members
 - Grantor
 - Person who has legal title (Legal owner of the real property)
 - Grantee
 - Person who the Grantor is giving something to
 - Equitable Title
 - Person is in charge of financing, has the right to use the land and enjoy its benefits. They have the right to acquire legal title. The borrower(or buyer) has Equitable Title until all financial obligations are satisfied and the property lien clear. The person's name will appear as the Grantee on the recorded documents.
 - Legal Title
 - Represents True ownership of the property but defers most if not all decision making to the person whom has Equitable Title. Name appears as Grantor on the recorded documents.
 - * With traditional mortgage loans the lender retains financial and Legal interest in the property via a Deed of Trust until the buyer satisfies the loan.
 - Chain of Conveyance
 - Shows who has legal title, issued when liens are satisfied
 - Liens
 - Mortgages, Tax liens, etc.
 - Lis Pen-dens
 - Someone has a reason to claim financial interest in the property

Building a Case Document Preparation and Analysis

Preparation of Work Papers

- Collect all documents
 - Maintain clean copies – Helps to avoid claims of someone driving the investigation in a favored or pre-determined direction. Notes can be provided on a separate sheet of paper.
 - Refer back to the interviews and collateral information you obtained
 - Alleged victim
 - Consider lifestyle, mobility, behaviors, ADL and capacity levels, what is normal and what is not
- Maintain a data log
 - Question spending for things like
 - Beauty Salons
 - On-line purchases,
 - Furniture
 - Vehicles
 - Appliances
 - Checks written to specific people
 - Gas and convenience stores (look at quantity
 - Funds transfers out of the account (where did it go?)
 - Cash withdrawals (by whom?)
 - ATM withdrawals (by whom? Who has a debit card?)
 - Out of area spending
 - Groceries, fast food and restaurants (for one person?)
 - Any high dollar spending.
 - Analyze the documents and eliminate all spending that appears to be an appropriate and/or reasonable expense.
 - Use a filter to help you identify, categorize and group together
 - Alleged victim's lifestyle, mobility, behaviors, ADL and capacity levels, what is normal and what is not
 - Recurring payments
 - Credit cards
 - Debit cards – how many?
 - Transfers – where are the funds going?
 - Location where charge occurred
 - Unexplained deposits
 - Unexplained withdrawals
 - Utilities/Bill pay – is everything normal?
 - Everyday spend
 - Automotive
 - Grocery
 - Item of interest?

Preparation of Work Papers cont.

- Record chain of custody
- Prepare accounting reconstructions
- Establish a timeline of events
- Analyze documents
 - Determine if there is a need for additional documents
 - If needed perform further research
 - Make collateral calls
 - Conduct interviews

Ultimately you will be left with only the activity that cannot be eliminated or explained. These items should also fit into the scope of the case allegations.

Utilizing the Financial Auditor

Working Together with Auditor

What can the Auditor do for you?

- Assist in obtaining necessary documentation

CLEAR Reports

Public Records Database

- Demographics
- Professional and Recreational Licenses
- Real time vehicles registered at address
- Relatives and neighbors
- Person – Address – Phone numbers
- Business affiliations
- Property records
- Criminal Records

Administrative Subpoenas

- Alleged victim must lack capacity
- Case worker must exhaust all available options to obtain financial records prior to using subpoena power
 - Subpoena must be your last option
 - Must have accurate PII (personal identifiable information)
 - Must have accurate financial institution information
 - Be prepared
 - Know what documents you need
 - Timeframes vary
- No Subpoena needed? – CLEAN, high quality documents please
 - Any notes or comments should be written on a separate paper

Court Cases

- Civil
- Criminal
- Not available
 - Sealed cases
 - Expunged cases
 - Juvenile anything
- Filter requests through your Program Manager, Supervisor, Auditor or APS Director

Working Together with Auditor cont.

County Recorder, Assessor and Treasurer's Office

- Real property ownership
- What is the property worth?
- Trust Deeds
- Quit Claim Deeds
- Conveyance
- Equitable or Legal Title
- Liens and Encumbrances
- Property Taxes

- Filter requests through your Program Manager, Supervisor, Auditor or APS Director

Estate Planning Documents

- Living Will / Advanced Directive
- Last Will and Testament
- Trust
- Power of Attorney
- Guardianship Appointment

LEAPS Recording

- Who? What? Where? When? Why?
- Teach your auditor about the alleged victim and their lifestyle
- Be thorough, ask the obvious questions and document
- Auditor can travel to assist

Referring to the Auditor

- Staff case with Supervisor or Manager
 - Staff case with Auditor
- If Auditor agrees to take case
 - Case workers gathers financial documents
 - Uploads to LEAPS
 - Updates Auditor
 - Auditor asks Manager to add Auditor to case in LEAPS
 - Please ensure our LEAPS activities are current

Working Together with Auditor cont.

What can you expect during an audit?

- Be prepared for case extension(s)
- May call caseworker
- May ask for additional documents
- May make phone calls
- May conduct interviews

Auditor will:

- Examine documents
- Document results
- Quantify results
- Report and present
- Thorough, objective and defensible

Coordinating and Collaborating

Medicaid Fraud Control Unit (MFCU)

Long-Term Care Ombudsman

Department of Health

Investigates complaints in LTCs

- May be a source of evidence/witnesses for criminal case
- Discovery
- May be an advocate
- May provide clarity or historical data
- Might voice “client privilege” but may also be willing to help with some encouragement
- Make your call and offer to help them by sharing APS involvement and position and they may return the favor

- Can locate other accounts, account activity, video narratives
- May also be a victim (i.e. NSF checks, write-offs)
- Make sure the alleged victim has reported the problem to their branch manager and advised them of APS involvement and open investigation. If they cannot do this, they should call and ask the Financial Institution to open their own investigation. Get the case number.
- This should allow the bank some flexibility in working with APS relative to bank records.

- Determine extent of victim's estate
- Capacity information
- May provide necessary evaluations
- Court visitor program

Coordinating and Collaborating cont.

Law Enforcement

- May have received the same report of abuse, neglect or exploitation

Veterans Administration

- If victim is receiving Veteran benefits or has a Representative Payee for his benefits

Social Security Administration

- If victim is being exploited using Social Security funds

Other Resources

Real Estate: County Resources

- Property Taxes = Treasurers Office
- Taxed Property Value = Assessors Office
- Property Movement = Records Office
- Current holder of title = Records Office
- Copy of Deeds = Records Office
- Mortgage = Records Office

Utah Notary Registry

<https://secure.utah.gov/notary/search.html>

Public Records

Utah Courts online site (Ask auditor or supervisor)

Social Networking sites

Google

Zillow.com

Credit Reports

Tips And Good To Know

TIPS

Reading Bank Statements

- SWIFT or Forex means International
- Transfer charges mean out of network
 - Follow the transfers
- Compare documents and verify the data
- Look for the good transactions and eliminate questionable ones
 - “normal and customary”

Bank Acronyms

- FTF Flex teller from
- FTT Flex teller to
- FT Flex teller
- ACH Automated clearing house
- EFT Electronic funds transfer
- SVP Stored value product
- POS Point of sale
- ATM Automatic teller machine
- NSF Non-sufficient funds
- P2p Person to person
- DDA Demand Deposit Account. AKA Direct deposit account
- RTN Routing and transit number (9 digits)
- PPD Pre-arranged Payment and deposit, also referred to as Direct Debit
- APR Annual percentage rate
- APY Annual percentage yield
- ISA Individual Savings Account
- CMA Combined Management and Investment Account
- RP Representative Payee Account
- MMDA Money Market Deposit Account



Reading Bank Statements

What Do You See?

Transaction history (continued)

<i>Date</i>	<i>Check Number</i>	<i>Description</i>	<i>Deposits/ Additions</i>	<i>Withdrawals/ Subtractions</i>	<i>Ending daily balance</i>
8/30		ATM Withdrawal authorized on 08/30 7869 S Redwood West Jordan UT 0000800 ATM ID 9343N Card 9455		300.00	6,214.50
8/31		Purchase authorized on 08/30 IN *A Plus Service 801-8490533 UT S586243569599110 Card 1856		75.00	
8/31		Purchase authorized on 08/30 Ho Ho Gourmet Salt Lake Cit UT S586243686309896 Card 9455		30.00	
8/31		Purchase authorized on 08/30 Southeast Market Salt Lake Cit UT S586243696991077 Card 9455		14.73	
8/31		Purchase authorized on 08/30 Corner Market 4 U West Jordan UT S466243752994464 Card 9455		29.51	
8/31		Purchase authorized on 08/30 Corner Market 4 U West Jordan UT S386243753343495 Card 9455		2.00	
8/31		Interest Payment	0.05		6,063.31
Ending balance on 8/31					6,063.31
Totals			\$4,762.12	\$2,701.73	

Reading Bank Statements

What Do You See?

Share 6

Money Market 7

4/11/2017	FUNDS TRANSFER TO SHARE ACCOUNT: XXXXXX097-4.1 H DEAN WISDOM	-5,000.00	17,662.26
3/31/2017	DIVIDEND EARNED FOR PERIOD OF 03/01/2017 THROUGH 03/31/2017 ANNUAL PERCENTAGE YIELD EARNED IS 0.19%	4.09	22,662.26
3/31/2017	AUTOMATIC DEPOSIT, OPM1 TREAS 310 XXCIV SERV PPD	1,330.16	22,658.17
3/22/2017	SPEECHACCESS FUNDS TRANSFER TO CHECKING	-5,000.00	21,328.01
3/21/2017	AUTOMATIC DEPOSIT, SSA TREAS 310 XXSOC SEC PPD	132.60	26,328.01
3/10/2017	BANK TO BANK TRANSFER FEE	-15.00	26,195.41
3/10/2017	BANK TO BANK TRANSFER	-4,000.00	26,210.41
2/28/2017	DIVIDEND EARNED FOR PERIOD OF 02/01/2017 THROUGH 02/28/2017 ANNUAL PERCENTAGE YIELD EARNED IS 0.20%	4.58	30,210.41
2/28/2017	AUTOMATIC DEPOSIT, OPM1 TREAS 310 XXCIV SERV PPD	1,330.16	30,205.83
2/21/2017	AUTOMATIC DEPOSIT, SSA TREAS 310 XXSOC SEC PPD	132.60	28,875.67
2/16/2017	SPEECHACCESS FUNDS TRANSFER TO VISA CREDIT	-2,000.00	28,743.07
1/31/2017	DIVIDEND EARNED FOR PERIOD OF 01/01/2017 THROUGH 01/31/2017 ANNUAL PERCENTAGE YIELD EARNED IS 0.20%	5.03	30,743.07

Reading Bank Statements

What Do You See?

Invitation Money Market Acct - xxxxx8144

Account Number: xxxxx8144
 Prior Day Balance: \$5.00
 Current Balance: \$5.00
 Available Balance: \$5.00
 Prior Year Interest Paid: \$115.84
 Interest Paid YTD: \$11.48

TRANSACTIONS PENDING

Date	Transaction	Description	Status	Debit (-)	Credit (+)
No Pending Transactions					

TRANSACTIONS CLEARED BETWEEN 02/05/2017 AND 03/09/2017

Date	Transaction	Description	Status	Debit (-)	Credit (+)	Balance
02/28/2017	Debit	TELLER XFER TO DDA SCHIEL LISEL ... <i>More</i>		\$523.72		\$5.00
02/28/2017	Electronic Deposit 1480134 <i>D</i>	DEUTSCHE POSTBK DE16982446PAYMENTS PEN078565050317770SCHIEL LISELOTTE REF # 017058001480134 <i>Less</i>	✓		\$311.21	\$528.72
02/28/2017	Electronic Deposit 1479918 <i>D</i>	DEUTSCHE POSTBK DE16982446PAYMENTS PEN012158990317770SCHIEL LISELOTTE REF # 017058001479918 <i>Less</i>	✓		\$212.51	\$217.51
02/27/2017	Check <i>10</i>	TELLER CASHED CHECK	✓	\$635.09		\$5.00
02/23/2017	Check 117 <i>F</i>	CHECK	✓	\$1,760.00		\$640.09
02/21/2017	Check <i>F</i>	TELLER CASHED CHECK	✓	\$88,241.00		\$2,400.09
02/17/2017	Check 122 <i>F</i>	CHECK <i>Summerfield</i>	✓	\$2,395.00		\$88,641.09
02/17/2017	Transfer Credit	TELLER XFER FROM DDA ***6013 ID: 000000886 <i>Less</i>	✓		\$57,735.52	\$91,036.09
02/15/2017	Interest Credit	INTEREST PAYMENT	✓		\$5.25	\$33,300.67

Transaction Status Legend:

✓	☐	⏸	✗
Cleared	Scheduled	In Progress	Problem

Reading Bank Statements

What Do You See?

Gold Interest Checking -xxxxx6013

Account Number: xxxxx6013
Prior Day Balance: \$260.09
Current Balance: \$165.96
Available Balance: \$165.96
Prior Year Interest Paid: \$28.05
Interest Paid YTD: \$4.68

Total Income \Rightarrow \$ 523.72
 $\$2674.77$
 Summerfield [3070-00]
 $\$395.26$ short
 $\$1486.00$
 605.05
 $\$2674.77$

TRANSACTIONS PENDING

Date	Transaction	Description	Status	Debit (-)	Credit (+)
03/09/2017	Debit	Questar Gas Co. QGC	=	\$94.13	

TRANSACTIONS CLEARED BETWEEN 02/06/2017 AND 03/03/2017

Date	Transaction	Description	Status	Debit (-)	Credit (+)	Balance
03/07/2017	Debit ①	CITY OF OREM 1876003258UTIL BILLPP... More	✓	\$48.86		\$260.09
03/08/2017	Check 5781	CHECK	✓	\$8.28		\$309.95
03/08/2017	Debit ①	SENTINEL SECURIT1270207762INSPREMIUMPP... More	✓	\$81.92		\$318.21
03/03/2017	Debit	TELLER XFER TO DDA SCHIEL LISEL ... More	✓	\$1,486.00		\$380.13
03/03/2017	Electronic Deposit 2207742 ①	SSA TREAS 310 9031736026XXSOC SEC PP... More	✓		\$1,486.00	\$1,866.13
03/02/2017	Debit ①	CENTURYLINK 9ATP027380AUTO PAY PP... More	✓	\$64.80		\$380.13
03/02/2017	Debit ①	COMCAST C849544000COMCAST PP... More	✓	\$55.80		\$444.82
03/01/2017	Debit ①	UTILITY LINE 1204283284DRAFT TE... More	✓	\$8.99		\$500.42
03/01/2017	Debit	TELLER XFER TO DDA SCHIEL LISEL ... More	✓	\$685.05		\$607.41
03/01/2017	Electronic Deposit 1841714 ①	DESERET MUTUAL 1870285828PAYROLL PP... More	✓		\$685.05	\$1,172.46
02/28/2017	Debit ①	UTILITY LINE 1204283284DRAFT TE... More	✓	\$4.49		\$507.41
02/23/2017	Debit ①	ROCKYMTN/PACIFIC1930248090POWER BILLPP... More	✓	\$44.71		\$611.90
02/23/2017	Debit	CENTURYLINK 9ATP027380AUTO PAY PP... More	✓	\$0.00		\$566.81
02/22/2017	Credit 84416	74892161L0005L3P5 DESERET BOOK CO 69 O... More	✓		\$26.25	\$556.61
02/21/2017	Check 5779	CHECK	✓	\$350.00		\$630.36

Reading Bank Statements

What Do You See?



Jumps from



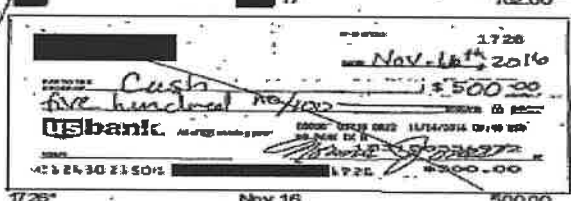
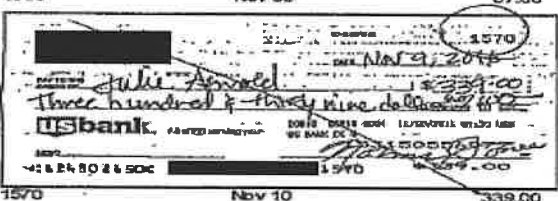
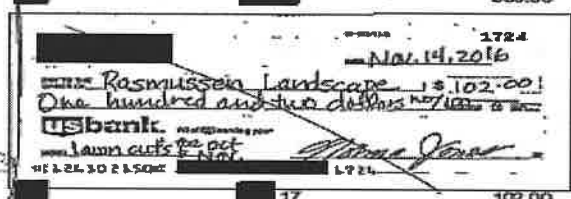
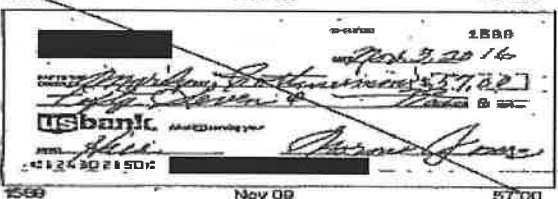
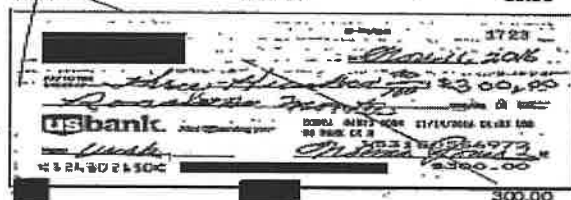
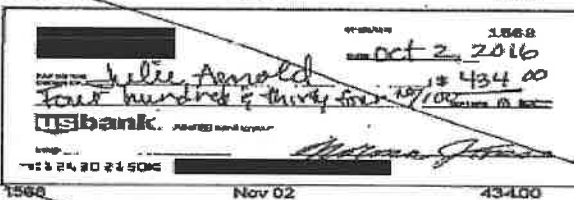
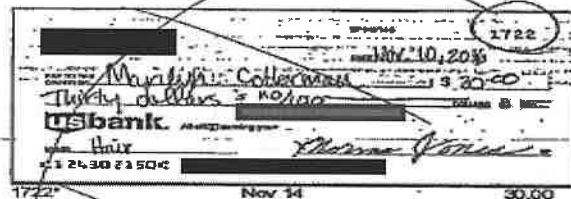
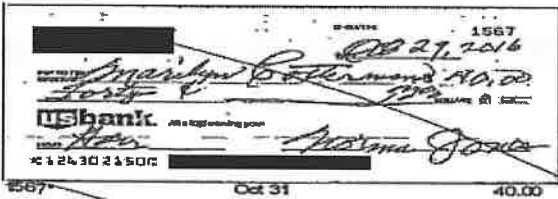
Uni-Statement
Account
Number: 1

Statement Period:
Oct 20, 2016
through
Nov 17, 2016

Page 4 of 4

IMAGES FOR YOUR SILVER ELITE CHECKING ACCOUNT

(CONTINUED)
Account Number 1-631-6055-6872



* Gap in check sequence

Good To Know.....

What is an Annuity?

- Long-term investment issued by an insurance company

What is a notarized document?

- A document which has been signed and sealed by a notary public. The notary public is an official who verifies the identities of everyone signing the document. He/she witnesses the signatures and marks the document with a stamp or seal. The notary does not generally certify the document is genuine, but he can if he is your attorney or banker and has sufficient knowledge of the document.

What is a Standing/Bankers Order?

- Instructions given to a bank to do the same thing at regular intervals, aka a “standing order”. Think automatic bill pay for a set amount, on the same day of every month such as rent or mortgage.

What is Factoring?

- Financial transaction where a business sells part of its business to a third party (the factor) at a discount in order to obtain immediate cash flow. Example: Business sells its accounts receivable to a debt collection company for 70% of the invoice totals, the factor keeps what it is able to collect.

What is a Brokerage Account?

- An investment account that allows you to buy and sell investments such as mutual funds, stocks and bonds.

What are Securities?

- An investment as an owner in which the owner hopes to gain profit. Example: stocks and bonds

What is a Check Conversion?

- Merchant or bank converts a paper check into electronic form; an image. The original paper check is immediately returned to the writer or later destroyed by a processor.

What is a re-presentment?

- When a merchant submits a charge again after it was returned or rejected by the financial institution. Merchant pleads its case and bank pleads its case. Example: Account holder disputes a charge on their account and merchant provides a signed receipt to prove its case.

What is a substitute check?

- Also called an “IRD” an Image Replacement Document. A legal and negotiable copy of an original paper check. It is marked as an “IRD” and has language that verifies it is a legal copy of the original check.

Reporting and Presenting

Writing the Report

- Identify the source of your documents
- Identify the document(s) and the specific information that you obtained from them
- Explain your analysis and conclusion; must be based on the facts of the case and contents of the document(s)
- Be specific and clear in your wording and explanation of events
- Avoid slang or jargon
- Address each allegation based on its own merits and the results of your analysis

Do not have any preconceptions about the case. Analysis should not be influenced by another's perspective or opinion.

Let the documents speak for themselves

Using Financial Evidence in Court

Timelines

- What happened and when

Spending Habits Over Time

- What did the finances look like before, during and after?

Listing the Checks and Payees

- Document the details and compare signatures. Elder population still uses checks

Story Boards

- Tells a story with visuals as support. Helps retain memory and tells you everything you "must" know.

Financial Exploitation Case Study

IV. FACTS

Leonard W. Swenson is a sixty-nine year old man. He is small in stature, about 5'3", weighs about 125 pounds, and is missing the forefinger on each of his hands. He suffers from some cognitive deficits, mild dementia, and a speech impairment as a result of a stroke he suffered in early 2007. He repeated the 3rd grade twice, and dropped out of school in the 7th grade.

Leonard worked for 27 years in the body shop of Banker's Towing in Renton. Former co-worker and his employer, Virginia Banker, described Leonard as being very timid and non-confrontational. She has never seen him angry. She further described Leonard as the type of person who would "give me his last dime."

Banker said Leonard's wife of 34 years was the 'rock' and together they had a wonderful life. "He depended on his wife for everything." During their years together, Leonard and his wife raised a family. They raised a daughter, Beverly Swenson, and two sons, Eric Swenson and Tony Swenson. Leonard's cognitive limitations, combined with his stable work and family relationships throughout most of his adulthood, contributed to making him more trusting of others. However, Leonard's life changed abruptly on July 9, 2005 when his wife was hit and killed in a traffic collision. Banker said that this "threw him for a loop and he was like a fish out of water."

After his wife's death, Leonard began to go to Classics Sports Bar in Renton a couple of times a week after work. Leonard would have beer and play pull tabs. Leonard would talk with the employees and patrons of the bar about his life and about the settlement he was to receive for his wife's death. Toward late spring or early summer 2006, Leonard met the defendant at the bar. The first time he met her, he followed her home at her invitation. About a week later, she asked him to spend the night at her house. Leonard slept in a room in her basement. By the end of 2006, Leonard had moved out of his home and into the basement of the defendant's home. Leonard understood that he would live in the defendant's home for \$500/month rent. Leonard stated that the defendant told him that he should make this move because her residence was closer to his workplace. Although they did not have a romantic relationship at the time, Leonard hoped that they would someday. Leonard understood when he moved into O'Neill's home that she was single. Leonard talked about his romantic interest in O'Neill to the defendant, her family, his family, and to neighbors. In fact, Leonard told his daughter, Beverly, that "Lisa might be your next stepmother." Neither the

defendant, nor her family, did anything to discourage Leonard's impression that they would marry someday.

Prior to meeting the defendant, Leonard had sufficient financial resources to cover his expenses. Leonard had bank accounts at Banner Bank, \$90,000 in CDs, a home with a mortgage, a Ford Ranger Truck with a loan, two life insurance policies through American National Insurance Company, and income from a steady job. The defendant, however, was not financially secure. She had bank account balances of less than \$500 and debt totaling \$ 49,337 from a truck loan, an auto loan, and a personal loan. In addition, the defendant had no steady employment.

Leonard's daughter Beverly was a joint account holder on her father's Banner Bank accounts. In the fall of 2006, she began to be concerned about her father's finances, due to the fact that he was writing a number of large checks to the defendant, a woman he barely knew.

1. The Defendant's Financial Exploitation of Leonard

A. Major Financial Transactions by the Defendant in 2006

On September 30, 2006, Leonard wrote a check to O'Neill in the amount of \$1,500. On October 5, 2006, \$10,000 was withdrawn from one of Leonard's CDs and transferred to a cashier's check payable to Lisa Marie O'Neill. On October 11, 2006, Leonard wrote a check to the defendant in the amount of \$7,000. And on October 17, 2006, more money was withdrawn from Leonard's CDs and a cashier's check in the amount of \$23,910.04 written to pay off the loan on the defendant's 2001 Ford F350 pickup truck. The defendant told Leonard that this was a loan, as she would rather pay him \$500 a month than to pay interest to a bank. On October 12, 2006, a purchase was made with Leonard's funds for a new computer and accessories at Fry's Electronics for \$4,759.83. Beverly Swenson knew that her father had never been to Fry's Electronics prior to meeting the defendant. When asked about the purchase, Leonard recalled that he went with the defendant to Fry's because she was getting a computer. Leonard said that the defendant told him she was going to pay him back. Leonard paid \$1,759.83 by check and had to open a credit account for the remaining \$3,000. On the same date, Leonard made a purchase at "Auto Glass" for \$212.14. The check indicated it was for "Lisa Glass." When asked about this check, Leonard stated that it was for the windshield of the defendant's truck. When asked if the defendant told him why she didn't have any money, Leonard responded that he had hoped they might have a relationship one day. He said, "She said someday we might get married, that age, don't make a difference."

a. Leonard's Children's Attempt to Intervene

After seeing all of these checks written to the defendant on their father's account, Beverly and Tony went to speak with Leonard in early November. When Leonard would not speak with them about the checks, they followed him to the defendant's house. Upon arriving there, Beverly and Tony confronted the defendant about what she was doing with their father's money. The defendant became extremely angry, and refused to speak with them about it. When it became clear to them that they were not going to accomplish anything by talking to the defendant, Beverly and Tony left. Shortly thereafter, as Beverly and Tony were getting food in downtown Renton, they saw the defendant and Leonard driving near Leonard's bank. Fearing the worst, Beverly and Tony followed the defendant and Leonard, pulling into the bank parking lot, and parking right next to them. While sitting in their car, Beverly and Tony overheard the defendant instructing Leonard to withdraw his money from his account. At this point, knowing that her father's money was at risk, Beverly went into the bank and transferred \$13,906.04 from his account into hers, leaving a balance of \$1. Leonard, convinced by the defendant that his children were trying to take his money from him, protested Beverly's taking over his funds. Eventually Beverly gave the money back to her father a little at a time before finally returning all of it.

b. The Defendant's Transfer of Leonard's Accounts to Her Bank

Within a few days of this incident, on approximately November 3, 2006, the defendant took Leonard to her bank, Boeing Employee's Credit Union (B.E.C.U.), and opened savings and checking accounts in his name as well as a \$10,000 line of credit. On November 27, 2006, the accounts that Leonard and his wife had held for years at Banner Bank were closed.

On December 6, 2006, a deposit of \$10,012.50 was made into Leonard's savings account at BECU. According to Leonard, this money came from one of his CDs that was cashed out. Two days later, a \$3,000 withdrawal was made from Leonard's savings account with a transaction description of "Descriptive Withdrawal to Lisa Marie O'Neill." According to BECU, a descriptive withdrawal is a transfer of funds that is done by an account holder.

On December 21, 2006 a \$9,000 advance was taken on Leonard's line of credit that had recently been obtained at BECU and was deposited into his BECU checking account. Leonard's bank records show that on that same day, a \$5,000 "Descriptive Withdrawal" was made to Lisa

Marie O'Neill. O'Neill's personal BECU account shows a corresponding \$5,000 deposit on that same date.

When Leonard was interviewed by Renton Police Detective Montemayor about the opening of the new accounts and the line of credit at BECU, he stated that he opened the accounts at O'Neill's suggestion. He said that the defendant told him that BECU was a better banking facility and she had her accounts there. On the day the new accounts were opened, Leonard remembered the defendant talking to the BECU employees at the bank, but he does not know what they were discussing. Leonard said that he did not participate in the conversation; he just signed some papers and was directed to a couch by the defendant so she could finish up business. Leonard knew he had opened new accounts at BECU but it was unclear to Detective Montemayor whether Leonard understood the difference in the accounts.

After signing the documents at BECU, Leonard recalls being issued an A.T.M. card on his account. He said that the defendant "got hold of it and never gave it back." He had given her the PIN number for the A.T.M. card. After defendant obtained his A.T.M. card, Leonard stated that he had no control over his finances. He recalled that the defendant would use the card to make withdrawals and then would play pull tabs with the cash. Also, during this time period, Leonard received weekly payroll checks that he would endorse to the defendant because she said she would deposit them in his account. These checks were generally in the \$400-\$700 range. Leonard does not recall ever seeing his money, or his bank statements, nor does he remember getting information from the defendant about his money in the accounts. Leonard told the Detective, "I don't know where she deposited it."

In addition to these large transactions, the defendant also used Leonard's ATM and credit cards to pay for other household and entertainment expenses. It is clear from the bank records that the majority of the funds that paid the household bills were Leonard's, not the defendant's. During the last 6 months of 2006, the defendant earned approximately \$11,663 in wages. Leonard, on the other hand, still had a portion of his savings, some money in CDs, his life insurance, his home, his truck, and steady income from a job.

B. Major Financial Transactions by the Defendant in 2007

In early January 2007, at the direction of the defendant, Leonard cashed out his life insurance policies with American National Insurance Company. On January 10, 2007, American National

Insurance Company issued him one check for \$3,226.28 and one for \$4,324.95 – a total of \$7,551.23.

Toward the end of January or early February of 2007, Leonard suffered a stroke. Beverly took him to Valley Medical Center. One of his children then picked him up on the following Sunday. Leonard went to work on Monday. Beverly claims that the stroke made her father's cognitive condition worse. After he had his stroke, the defendant told Leonard she would take care of him and his bills. Consequently, Leonard moved back in with the defendant and Leonard's children saw very little of him over the next year.

The police investigation revealed that during 2007, the defendant isolated Leonard even further from his family. When Leonard moved in with the defendant, he brought his Ford Ranger truck. Bank records indicate that the last payment on the truck was made in May 2007. As a result of the defendant's failure to make payments on the loan, Leonard's truck was repossessed, leaving him without an independent means of transportation. According to Leonard, the defendant also took away his cell phone so that she wouldn't have to pay his bill.

On September 6, 2007, Leonard retired from Banker's Towing. According to Virginia Banker, he was no longer able to do his job effectively as a result of his stroke. Leonard was also drinking a lot at this time. After retiring, Leonard told police he stayed mainly in the defendant's basement and did chores around the house and yard. Leonard said that did not feel that he was free to leave O'Neill's residence.

Between September 7 and early October 2007, Leonard began to receive weekly unemployment checks in the amount of \$411.00. While Leonard received four (4) of these checks totaling \$1,644 during this time, he endorsed all of them to O'Neill for deposit. Rather than deposit these checks into Leonard's BECU account, Lisa deposited them each into her own personal BECU account.

On October 11, 2007, the defendant persuaded Leonard to open an account at Bank of America. Leonard does not know why this occurred. He also was not aware that it was a joint account until O'Neill made a comment about it a few months later. Leonard stated that O'Neill never showed him a bank statement for the accounts nor did she give him an ATM card for the accounts.

C. Major Financial Transactions by the Defendant in 2008

From September 2007 through June 2008, a total of \$13,098 in Leonard's Social Security checks and \$9101 in unemployment checks were deposited into the joint account he held with the defendant. Upon the deposit of all of the Social Security checks each month, the defendant immediately transferred the money on-line to her own personal account where Leonard could not have access to it. With regard to the unemployment checks, O'Neill deposited all 22 checks into the joint account and then immediately transferred the money from 12 of the checks to her personal account withdrawing the remaining money over time from the joint account.

Also around this time, creditors were foreclosing against Leonard due to the defendant's failure to pay the mortgage on his home. When Leonard was able to sell his home in January 2008 for a slight profit of \$8,274 prior to the completion of the foreclosure, that payment was split so that \$4,137 went to Leonard's son, Tony, and the remaining \$4,137 was wire transferred into Leonard's joint account. Immediately after those funds were deposited, the defendant transferred them on-line into her personal account.

In March and June of 2008, Leonard received additional deposits into the joint accounts for his benefit totaling \$14,353.96. Again, immediately after these deposits, the defendant made an on-line transfer of approximately \$14,320 into her personal account. Throughout this time, significant cash withdrawals were also made from the joint accounts by use of the ATM card. Leonard did not make any of the transfers because he does not use a computer and he did not make any of the withdrawals because he did not possess an ATM card.

2. The Defendant's Exploitation of Leonard was not limited to his Finances

In addition to using deception and secrecy to obtain and keep control over Leonard's assets, the defendant used physical and psychological abuse to coerce him into continuing to allow her to control his assets. Leonard recalls that after he had lived with the defendant for a while, she was less accepting of him and would often become angry with him. The defendant would scold him for not doing things to her standard. She would often push him and knock his hat from his head. In April 2008, the defendant pushed Leonard down a flight of stairs. Leonard's back hurt for a long period of

time afterward, and he suspected that he had a cracked rib. Leonard told police that he did not go the hospital but wanted to. He said he did not feel he had the means to get to a hospital without the defendant's assistance. When the police questioned Leonard further about why he did not ask to be taken to the hospital at the time, Leonard stated, "I was kind of scared." Leonard described O'Neill's general disposition as being "mean" and that he was intimidated by her.

Leonard also told police that the defendant had hit him with a phone and, on another occasion, with a rusty saw. Leonard said the defendant would call him names and belittle him. After Leonard's stroke, from which he suffered a speech impairment, the defendant would allow Leonard to go with her to meet friends in a bar. However, before going out the victim said that O'Neill would tell him "not to say nothing to nobody else. Don't talk. Don't talk at all.... I couldn't talk good anyways, so she told me to be quiet." Even within the defendant's home, Leonard could not walk upstairs without calling out for permission. Leonard said he did not have access to a phone in the defendant's house because she had no land line and he had no cell phone.

Finally, one night during the week of July 7, 2008, Leonard woke at about 5:30 a.m. He knew that O'Neill had stayed up until about 3:00 a.m. watching television. He turned the porch light off and walked out of the house. He told police that he was afraid that if the defendant saw him leaving, she would have pulled him back into the house. Leonard walked to Banker's Towing, approximately 5.4 miles from the defendant's house. He knocked on the door of Virginia Banker's apartment. Banker recalled Leonard saying that he had left O'Neill and had nowhere to go. Banker allowed Leonard to stay with her until he was able to contact his family.

Approximately one week later, on July 18, 2008, Leonard was interviewed by Adult Protective Services worker Kathleen Young. He reported that the defendant physically and verbally used him. He said that the verbal abuse occurred several times daily, and included her calling him a "faggot," a "moron," an "idiot," and a "leprechaun." He added, "I don't seem to be doing things the way she wants it done." He said that O'Neill would "bop" him, push him, and hit him with the cell phone "if I didn't say things right." He said this had occurred a couple of times a week for the past year. He said that he began to give her money because she told him she was a victim of identity theft and needed money to pay her bills. When Young asked him where his credit cards currently were, Leonard answered, "She's got the cards." He also said that the defendant told him not to talk. He added, "She did things so fast I got confused... I couldn't think straight. Do this now. Do that now." He ended his interview by saying, "Within the past year, I felt like I was a slave. I had to stay

in my room. I could never stay in the living room and watch TV.” He said he felt trapped in O’Neill’s home with no transportation, money or telephone.

On March 12th of 2009, Leonard was evaluated at the request of Detective Montemayor by Angela Heald, M.D., a geriatric psychiatrist. In the interview, Leonard told Dr. Heald that he had stopped paying the mortgage on his home after moving in with the defendant because she told him to. He could not explain to the psychiatrist why it was a good idea to leave his home in the first place, or how he had thought that not paying his mortgage was a good idea. He reported that the defendant had told him that paying her rent left him open to the option of eventually buying into her split-level home.

Regarding his bank accounts, Leonard told Dr. Heald that he would sign his checks for her to deposit into what he believed was his account. He was unable to explain why he thought this was a good idea. He stated that the defendant had created a joint account for them both at Bank of America from which she withdrew his money. He reported that at no time did he suspect that the defendant was using his funds without his permission. He said that he later discovered credit cards in his name that he was not using but for which he was being billed and that much of his money was gone.

After an in-depth interview and testing of Leonard, Heald concluded that he “appears to have a dementia of a vascular type given his history of stroke. . . he had significant deficits in his frontal assessment battery, which reveals deficits in executive functioning and decision-making capacity.” Additionally, Leonard’s testing indicated a lapse in attention and concentration and he exhibited significant problems completing one of the more sensitive tests for cognitive impairment. Leonard also demonstrated some difficulty in learning new information and processing appropriately, which, Heald concluded, “combined with his disturbances in executive functioning, and impairment in his regular functioning by way of losing his job of 27 years, and losing a large amount of his finances in very poor decision-making, he meets the criteria for a dementia.”

When Leonard left the defendant's home under cover of darkness, he did so with a small plastic bag of his few belongings. As a result of the time he had spent with the defendant, Leonard had lost all of his assets, could not afford to pay his bills, and his credit was ruined. The defendant, on the other hand, now owned her expensive truck free and clear, purchased the home she'd been renting, and had numerous other new possessions. The Bank of America records for the joint

accounts indicate that as of the date of their opening until they were closed, Leonard deposited a total of \$40,956 into them. During the same period of time, the defendant deposited a total of \$94 into the accounts. Of the \$40,956 that Leonard put into the joint accounts, the defendant transferred \$37,365 from the accounts into her own personal account for her own use.

The following table is a summary of the major thefts charged in this case. The table sets out each charged count, the date of the offense, and the corresponding assets that were taken. It was created from the summary of the bank records belonging to the defendant and Leonard:

Leonard's Financial Profile 7/1/06

- \$90,000 in CD's
- House (with Mortgage)
- Truck (with Loan)
- Job

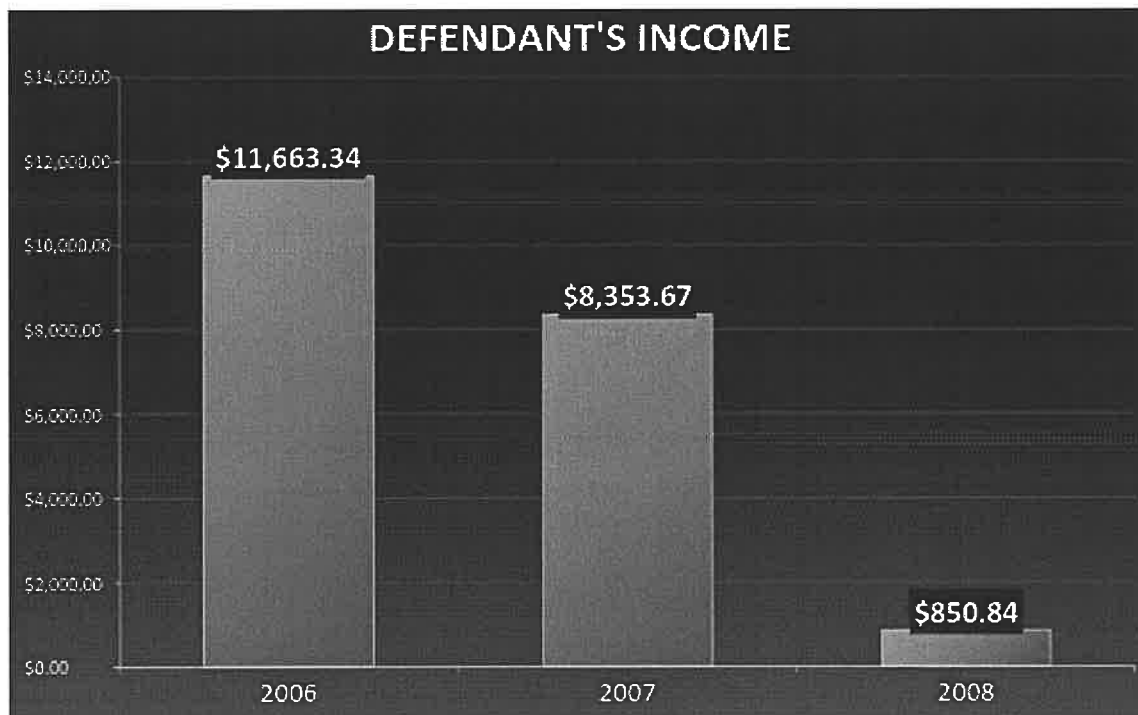
Defendant's Financial Profile 7/1/06

- \$294 case in BECU
- \$163 in BOA checking with Stuart
- \$6,634 Personal Loan at BECU
- \$18,782 Auto Loan at BECU
- \$23,921 Loan - F-350 Truck
- Sporadic Employment

Leonard's Income: 21 Month Period

11/06 – 7/08

❖ Job at Banker's Towing	19,903
❖ Life Insurance Policies	7,551
❖ Social Security	27,282
❖ Unemployment Benefits	10,745
❖ Sale of Leonard's House	4,137
❖ Tax Refund	267
❖ <u>Lawsuit Settlement</u>	<u>6,834</u>
❖ <u>TOTAL</u>	<u>76,718</u>



Leonard's Financial Profile 7/1/06

- ~~\$90,000 in CD's~~
- ~~House (with Mortgage)~~
- ~~Truck (with Loan)~~
- ~~Job~~

Leonard's Income Today

Social Security \$1,644/mo

Leonard's Debts 7/1/08

- \$9,775 LOC
- \$2,750 AMEX
- \$5,058 WAMU/Visa
- 13,548 Truck Loan
- \$3,233 Fry's

Defendant's Financial Profile 7/1/08

- \$60 case in BECU
- \$1,398 in BOA checking
- \$2,471 owed on BECU LOC
- ~~\$6,634 Personal Loan at BECU~~
- ~~\$18,782 Auto Loan at BECU~~
- ~~123,921 Loan~~ - F-350 Truck
- Minimal Employment
- House (Mortgage)

Total Funds Transferred from Leonard's Accounts to Defendant's Accounts 9/30/06 – 6/30/08

➤ From Banner Bank	\$42,410
➤ From BECU	10,900
➤ <u>From Bank of America</u>	<u>\$37,331</u>
Total	\$90,642

Spending in Defendant's BECU Checking

<u>Category</u>	<u>Debit Amount</u>
Cash Withdrawals	\$33,533.00
Mortgage Payments	28,815.40
Rent	14,697.30
Transfer to Lisa Savings 2261	11,000.00
Funds Transfer to Relatives/Friends	5,875.00
Gas/Convenience Stores	5,472.01
Electronics Stores	4,944.18
Transfer to Lisa Auto Loan 3708	4,719.19
Restaurants & Bars	4,680.96
Credit Card Payments	4,259.35
Discount Stores	3,430.69
Entertainment, Gaming Casinos	3,309.08
Automotive Supplies/Services/Parts	3,140.82
Property Taxes	2,728.69
Miscellaneous or Unknown	2,661.44
Transfer to Lisa Personal Loan 3716	2,575.00
Grocery Stores	2,253.32
Insurance Premiums	1,827.52
Pets/Pet Care & Supplies	1,797.02
Utilities	1,738.17
Collection Agencies	1,335.62
Land Survey Co.	1,043.00

Count 2 - \$1,700 Theft

Leonard Swenson & Lisa O'Neill
Bank of America Joint Savings Acct #4731

11/21/07 – Leonard's Social Security
Deposit of \$1606

11/21/07 – \$1,700 Online Transfer to Lisa O'Neill
Checking Acct #4723



Lisa O'Neill's Bank of America checking Acct #4723

11/21/07 - \$1,700 Online Transfer from Joint Savings Acct #4731

Bank of America Statement – SAV Acct #4731

ACCOUNT STATEMENT

PAGE 2 OF 2

LEONARD SWENSON
LISA MARIE ONEILL

CHECKING SERVICE CHARGE AND FEE SUMMARY

AMOUNT	DESCRIPTION
20.00	OVERDRAFT ITEM FEE
20.00	TOTAL SERVICE CHARGES AND FEES

FIRSTCHOICE MARKET RATE SAVINGS ACTIVITY

POSTED	AMOUNT	DESCRIPTION
11-21	411.00	CUSTOMER DEPOSIT
11-21	1606.00	US TREASURY .303 SOC SEC 533*****A SSA
11-21	1700.00	BANKER ON LINE TRSFR TO CHECKING 34574723
11-26	421.37	BANKER ON LINE TRSFR TO CHECKING 34574731
11-29	1.65	KEEP THE CHANGE CREDIT FROM ACCT 4731 FOR 11/29
12-11	411.00	CUSTOMER DEPOSIT
12-12	100.00	BANKER ON LINE TRSFR TO CHECKING 34574723

11-21	1606.00	US TREASURY .303 SOC SEC 533*****A SSA
11-21	1700.00	BANKER ON LINE TRSFR TO CHECKING 34574723

Bank of America Statement – CKG Acct #4723

ACCOUNT STATEMENT

BURIEN BRANCH
230 SW 152ND STREET
SEATTLE WA 98186

PAGE 1 OF 2

FOR CUSTOMER SERVICE CALL 1.800.442.6680.
IN THE SEATTLE AREA CALL 206.461.0800.
TTY/TDD USERS: 1.800.232.6299.

LISA MARIE ONEILL
2447 MONTEREY AVE NE
RENTON WA 98056-2275

ACCOUNT NUMBER
STATEMENT PERIOD

|||||

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SUMMARY OF YOUR ACCOUNTS			
CHECKING		SAVINGS	
MYACCESS CHECKING	34574723	FIRSTCHOICE MARKET RATE	34574723
BEGINNING BALANCE	25.00	BEGINNING BALANCE	25.00
DEPOSITS	3085.97	DEPOSITS	3.24
WITHDRAWALS	2201.00	WITHDRAWALS	25.00
SERVICE CHARGES/FEES	2.00	ENDING BALANCE	3.24
ENDING BALANCE	1207.97	AVERAGE DAILY BAL	5.37
MIN BAL ON 11-17-2007	25.00		

CHECKING ACTIVITY

DEPOSITS
POSTED

DATE	AMOUNT	DESCRIPTION
11-21	1700.00	ONLINE BANKING TRNSFR FROM SAVINGS 34574731
11-21	25.00	ONLINE BANKING TRNSFR FROM SAVINGS 34574723
11-21	2.50	ONLINE BANKING TRNSFR FROM CHECKING 34574731
11-26	300.00	ONLINE BANKING TRNSFR FROM CHECKING 34574731
11-30	200.00	ONLINE BANKING TRNSFR FROM CHECKING 34574731
12-11	358.47	DEPOSIT
12-17	400.00	ONLINE BANKING TRNSFR FROM SAVINGS 34574731
12-17	400.00	ONLINE BANKING TRNSFR FROM CHECKING 34574731

WITHDRAWALS
POSTED

DATE	AMOUNT	DESCRIPTION
11-21	282.16	PURCHASE 90621121034159944262401 ON 11/21 WAL-MART #2516 RENTON
11-21	.84	KEEP THE CHANGE TRANSFER TO ACCT 4723 FOR 11/21
11-26	44.87	PURCHASE 90631121009242344262401 ON 11/21 KENNYDALE FUEL RENTON
11-26	.13	KEEP THE CHANGE TRANSFER TO ACCT 4723 FOR 11/26
11-29	41.20	PURCHASE 90621128097914344262401 ON 11/28 TARGET T0627 SOUT TUKWILA
11-29	5.33	PURCHASE 90631128028893544262401 ON 11/28 76 / CIRCLE K 61105516 RENTON
11-29	1.47	KEEP THE CHANGE TRANSFER TO ACCT 4723 FOR 11/29
11-30	1600.00	CASH WITHDRAWAL WESTWOOD
11-30	71.85	PURCHASE 90631128025921144262401 ON 11/28 RITE AID STORE 5203 RENTON
11-30	22.47	PURCHASE 90631128022787944262401 ON 11/28 PONY KEG LOUNGE & EATER KENT
11-30	22.00	PURCHASE 90631129022802544262401 ON 11/29 PONY KEG LOUNGE & EATER KENT
11-30	.88	KEEP THE CHANGE TRANSFER TO ACCT 4723 FOR 11/30
12-03	102.00	NON-BANKOFAMERICA ATM WITHDRAWAL ON 12/03 2823 SW ROXBURY S SEATTLE
12-11	5.88	PURCHASE 90621211012290644262401 ON 12/11 ARCO PAYPOINT RENTON

Bank of America Statement – CKG Acct #4723

LISA MARIE ONEILL
2447 MONTEREY AVE NE
RENTON WA 98056-2276

ACCOUNT STATEMENT

PAGE 1 OF 2

LISA MARIE ONEILL
2447 MONTEREY AVE NE
RENTON WA 98056-2276

ACCOUNT NUMBER
STATEMENT PERIOD

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SUMMARY OF YOUR ACCOUNTS

CHECKING		SAVINGS	
MYACCESS CHECKING	34574723	FIRSTCHOICE MARKET RATE	34574723
BEGINNING BALANCE	25.00	BEGINNING BALANCE	25.00
			3.24
			25.00
			3.24
			5.97

DEPOSITS POSTED

AMOUNT DESCRIPTION

11-21 1700.00 ONLINE BANKING TRNSFR FROM SAVINGS 4731

CHECKING ACTIVITY

DEPOSITS POSTED

DATE	AMOUNT	DESCRIPTION
11-21	1700.00	ONLINE BANKING TRNSFR FROM SAVINGS 34574731
11-21	25.00	ONLINE BANKING TRNSFR FROM SAVINGS 34574723
11-21	2.50	ONLINE BANKING TRNSFR FROM CHECKING 34574731
11-26	300.00	ONLINE BANKING TRNSFR FROM CHECKING 34574731
11-30	200.00	ONLINE BANKING TRNSFR FROM CHECKING 34574731
12-11	358.47	DEPOSIT
12-17	400.00	ONLINE BANKING TRNSFR FROM SAVINGS 34574731
12-17	400.00	ONLINE BANKING TRNSFR FROM CHECKING 34574731

WITHDRAWALS POSTED

DATE	AMOUNT	DESCRIPTION
11-21	282.16	PURCHASE 90621121034159944262401 ON 11/21 WAL-MART #2516 RENTON
11-21	.84	KEEP THE CHANGE TRANSFER TO ACCT 4723 FOR 11/21
11-26	44.87	PURCHASE 90631121009242344262401 ON 11/21 KENNYDALE FUEL RENTON
11-26	.13	KEEP THE CHANGE TRANSFER TO ACCT 4723 FOR 11/26
11-29	41.20	PURCHASE 90621128097314344262401 ON 11/28 TARGET T0627 SOUT TUKWILA
11-29	5.33	PURCHASE 90631128028893544262401 ON 11/28 76 / CIRCLE K 61105516 RENTON
11-29	1.47	KEEP THE CHANGE TRANSFER TO ACCT 4723 FOR 11/29
11-30	1600.00	CASH WITHDRAWAL WESTWOOD
11-30	71.85	PURCHASE 90631128025921144262401 ON 11/28 RITE AID STORE 5203 RENTON
11-30	22.47	PURCHASE 90631128022787944262401 ON 11/28 PONY KEG LOUNGE & EATER KENT
11-30	22.00	PURCHASE 90631129022802544262401 ON 11/29 PONY KEG LOUNGE & EATER KENT
11-30	.68	KEEP THE CHANGE TRANSFER TO ACCT 4723 FOR 11/30
12-03	102.00	NON-BANKOFAMERICA ATM WITHDRAWAL ON 12/03 2823 SW ROXBURY S SEATTLE
12-11	5.88	PURCHASE 90621211012290644262401 ON 12/11 ARCO PAYPOINT RENTON

Conclusion of Case Study

COUNT	DATE	ORIG. SOURCE	Amount of Theft	Use of Theft Proceeds
Count 1	10/17/06	Swenson Banner Bank CD	\$23,910.04	Converted CD to cashier's check to pay off Lisa O'Neill's truck
Count 2	11/21/07	Swenson Social Security check	\$ 1,700.00	Online transfer to O'Neill separate Bank of America account
Count 3	12/19/07	Swenson Social Security check	\$ 1,625.00	Online transfer to O'Neill separate Bank of America account
Count 4	1/11/08	Proceeds from sale of Leonard's House	\$ 4,100.00	Online transfer to O'Neill separate Bank of America account
Count 5	1/17/08	Swenson Social Security check	\$ 1,600.00	Online transfer to O'Neill separate Bank of America account
Count 6	2/21/08	Swenson Social Security check	\$ 1,644.00	Online transfer to O'Neill separate Bank of America account
Count 7	3/19/08	Swenson Social Security check	\$ 1,644.06	Online transfer to O'Neill separate Bank of America account
Count 8	4/2/08	Platinum Escrow check to Swenson	\$ 4,900.00	Online transfer to O'Neill separate Bank of America account
Count 9	4/9/08	Platinum Escrow check to Swenson	\$ 2,620.00	Online transfer to O'Neill separate Bank of America account
Count 10	4/17/08	Swenson Social Security check	\$ 1,644.00	Online transfer to O'Neill separate Bank of America account
Count 11	5/21/08	Swenson Social Security check	\$ 1,640.00	Online transfer to O'Neill separate Bank of America account
Count 12	6/18/08	Swenson Social Security check	\$ 1,600.00	Online transfer to O'Neill separate Bank of America account
Count 13	6/30/08	Swenson check from Law Offices of David Richardson	\$ 6,800.00	Online transfer to O'Neill separate Bank of America account

Count 14	9/30/06- 6/30/08	All of the above plus items below:	\$ 55,427.10	
	9/23/06	Swenson Banner Bank CKG	\$ 1,500.00	Check from Swenson to O'Neill
	10/5/06	Swenson Banner Bank CD	\$ 10,000.00	Converted CD to cashier's check written to O'Neill
	10/11/06	Swenson Banner Bank CKG	\$ 7,000.00	Check from Swenson to O'Neill
	11/28/06	Swenson BECU Withdrawal	\$ 2,000.00	Withdrawal from Swenson to O'Neill separate BECU account
	12/8/06	Swenson BECU Withdrawal	\$ 3,000.00	Withdrawal from Swenson to O'Neill separate BECU account
	12/21/06	Swenson BECU withdrawal	\$ 5,000.00	Withdrawal from Swenson to O'Neill separate BECU account
		Count 14 TOTAL	\$ 83,927.10	

