DOCUMENTATION AND EVIDENCE COLLECTION IN NEGLECT AND FINANCIAL EXPOITATION CASES

When investigating elder neglect cases, officers should:

- Look in medicine cabinets
- Photograph injuries and living environment
- Photograph damage to the home that may be due to violence, such as holes in the walls, or negligence, such as water damage from leaking pipes or holes in the roof
- Draw a body map
- Tape the interviews
- Take possible weapons or items that caused injuries, such as belts, ropes, knives, that may have been involved in the crime
- Observe power and control tactics – document in report
- Take damaged clothing/items from the house
- Look in kitchen cabinets and the refrigerator to check for food
- Inspect other cabinets to check for other necessities, such as soap, toilet paper, and cleaning products
- Assess the condition of the exterior and interior of the house, the roof, and yard as well as check if the utilities (electricity, heat, gas, water) work
- Examine prescriptions and medicine bottles to determine if the victim appears to be receiving the proper level of prescribed medications
- Assess if money is being spent for the care of the older adult or for the needs and wants of the caregiver
- Locate paperwork documenting who is responsible for providing care
- Identify any broken or disabled assistive devices
- Document observations in a clear, concise fashion
- Take photographs of the environment and the victim

Additional considerations

- The older adult victim's demeanor
- The victim's reactions to or in the presence of the suspect
- Because multiple forms of abuse often co-occur, officers should look for other indicators of abuse
- Have available or obtain the contact information for agencies already involved

- Obtain information about any current or past care providers/agencies

Tips for taking photographs in elder abuse and neglect cases:

- Follow department photography procedures.
- Photograph the scene.
- Photograph injuries on the victim, suspect, children, and pets.
- Take full-length and close up pictures.
- Take photographs at different distances.
- Use an object such as a pen or ruler to show the size perspective of the injury.
- Take photographs of the victim two to three days later to show the full extent of the injuries (bruises are often more visible a few days later).
- Use a photograph log and fully document what the officers have photographed in case the photographs are lost or the quality of the photographs is poor.
- If departments do not have cameras, use forms with body charts to indicate the location of injuries or use disposable cameras.

POWERS OF ATTORNEY AND GUARDIANSHIPS/CONSERVATORSHIPS

Powers of Attorney, Guardianships/Conservatorships are legal mechanisms describing the appointment of another person to take over decision making for someone else. These are **not licenses to steal**.

Power of Attorney (POA): An instrument by which one person (the principal) transfers authority to make decisions such as medical care, end of life decisions, or financial management to another (the attorney in fact). The authority must be created while the principal has mental capacity and can be revoked at any time while having capacity. There is no court oversight of POAs.

Guardianship/Conservatorship: A mechanism by which a court grants certain powers to a family member, other individual, governmental agency, or institution to control the affairs of a person (ward) who is incapable of managing for him or herself. Courts generally require medical reports about the mental capacity of the proposed ward before appointing a guardian.

In evaluating any legal instrument, law enforcement should consider:

- What does this document authorize?
    - What are the limitations on authority?
    - When does it become effective?
    - Who has the authority to act?
    - Does it authorize gifts or loans to the person with decision making authority?

- When it was created:
    - Who created it?
    - What was the older adult's cognitive function?
    - If created by the older adult:
        - What was the older adult's understanding of what s/he was doing?
        - What were the surrounding circumstances?

Problems with Powers of Attorney (POA) or Guardianships that Law Enforcement May Encounter in Elder Abuse Cases

- The requirements for signing are not met (e.g. victim's lack sufficient mental capacity, state requirements for witnesses are not met, etc.)
- Victims are coerced or tricked into signing
- Legal powers used after they have terminated
- Legal powers used for purposes other than those for which they were intended
- Property transferred to guardian or person with POA without authorization to do so
- POAs or guardians use powers to give themselves gifts
- POAs or guardians fail to carry out responsibilities (e.g. fail to pay bills or for victim's medical care or assistive devices)

Investigating Financial Exploitation by Powers of Attorney and Guardianships/ Conservatorships

- While most guardians and attorneys in fact carefully and properly execute their responsibilities, some are abusers.
- Presence of such instruments as Powers of Attorney or Guardianships/Conservatorships does not make the activity merely civil.
- Officers should conduct an investigation to determine if criminal financial exploitation has occurred.
- An elder law attorney or accountant may be able to review the documents and help law enforcement understand what can and cannot be done.

In mandatory reporting states, it is likely that APS must be notified. Even if you are not mandated, consider making a voluntary report to APS – staff may be able to assist with the investigation or have expertise in understanding various documents.