

Prosecutor Companion Guide

Supporting and Using Recorded Interviews in Elder Abuse, Neglect, and Exploitation Cases Involving Decision-Making Capacity



About this Guide

This Guide is intended to be used with the Interview Guide for Investigators: Conducting Recorded Interviews to Document Cognitive Status in Elder Abuse, Neglect, and Exploitation cases. While the Investigator Guide focuses on capturing observable indicators through recorded supplemental interviews, this companion guide helps prosecutors advise and assist investigators on when and how to conduct recorded interviews, guide case development by explaining the evidentiary value of interviews, and address legal and strategic considerations.

Prosecutors are encouraged to engage with investigators early to align interview goals, evidence preservation, and anticipated legal challenges. The Investigator Guide is designed to be adaptable to the specifics of each jurisdiction.



Why This Matters

In many elder abuse, neglect, and exploitation cases, questions about the victim's decision-making capacity are central. Recorded interviews conducted near the time of the offense can provide evidence relevant to questions of capacity, support or challenge claims of consent, preserve evidence of the victim's condition if they later cannot testify, and assist in determining whether the case is prosecutable. Used effectively, these interviews strengthen your case theory and prosecution strategy.



When to Use Recorded Interviews

Recording can be valuable when anticipating a consent defense, undue influence is suspected, the victim may be cognitively impaired or declining, the victim may become unavailable or uncooperative, and/or when planning to introduce an expert opinion related to capacity.



Legal and Strategic Considerations

The recorded interview is a supplemental interview (a targeted, recorded session distinct from the full forensic interview) and preserves decision-making capacity-related observations without duplicating the full victim interview.

- Define the purpose of the interview upfront to guide questions and collaborate closely with investigators on scope and strategy
- Confirm the admissibility of recorded statements in your jurisdiction
- Avoid using recorded victim interviews as a substitute for full interviews
- Consider the possibility that the victim may become unavailable to testify
- Anticipate hearsay exceptions, Confrontation Clause issues, and other legal challenges
- Emphasize timing and be cautious with interviews conducted long after the incident

Case Study: During an investigation, the victim insists she gave her grandson permission to use her debit card for his own benefit, but struggles to provide basic financial information. Recording her responses can preserve critical evidence of her decision-making capacity at that time, which may be key in deciding whether to prosecute and in rebutting a consent defense.

Key Takeaways

- ✓ Assess whether a recorded interview could help rebut claims of consent
- ✓ Consider the possibility that the victim may become unavailable to testify
- ✓ Collaborate early with the investigator to discuss interview goals and content
- ✓ Ensure the interview content aligns with and supports your case theory