



## Developing an undue influence screening tool for Adult Protective Services

Mary Joy Quinn MA, RN, PHN, LMFT, Lisa Nerenberg MA, MPH, Adria E. Navarro PhD, LCSW & Kathleen H. Wilber PhD

To cite this article: Mary Joy Quinn MA, RN, PHN, LMFT, Lisa Nerenberg MA, MPH, Adria E. Navarro PhD, LCSW & Kathleen H. Wilber PhD (2017) Developing an undue influence screening tool for Adult Protective Services, Journal of Elder Abuse & Neglect, 29:2-3, 157-185, DOI: [10.1080/08946566.2017.1314844](https://doi.org/10.1080/08946566.2017.1314844)

To link to this article: <https://doi.org/10.1080/08946566.2017.1314844>



Accepted author version posted online: 11 Apr 2017.  
Published online: 11 Apr 2017.



Submit your article to this journal [↗](#)



Article views: 349



View Crossmark data [↗](#)



Citing articles: 1 View citing articles [↗](#)

## Developing an undue influence screening tool for Adult Protective Services

Mary Joy Quinn, MA, RN, PHN, LMFT<sup>a</sup>, Lisa Nerenberg, MA, MPH<sup>b,c</sup>,  
Adria E. Navarro, PhD, LCSW<sup>d</sup>, and Kathleen H. Wilber, PhD<sup>e</sup>

<sup>a</sup>Probate Court (Ret.), California Superior Court, County of San Francisco, San Francisco, California, USA;

<sup>b</sup>California Elder Justice Coalition, San Francisco, California, USA; <sup>c</sup>Health Education Department, City College of San Francisco, San Francisco, California, USA; <sup>d</sup>Keck School of Medicine, University of Southern California, Los Angeles, California, USA; <sup>e</sup>Davis School of Gerontology, University of Southern California, Los Angeles, California, USA

### ABSTRACT

The study purpose was to develop and pilot an undue influence screening tool for California's Adult Protective Services (APS) personnel based on the definition of undue influence enacted into California law January 1, 2014. Methods included four focus groups with APS providers ( $n = 33$ ), piloting the preliminary tool by APS personnel ( $n = 15$ ), and interviews with four elder abuse experts and two APS administrators. Social service literature—including existing undue influence models—was reviewed, as were existing screening and assessment tools. Using the information from these various sources, the California Undue Influence Screening Tool (CUIST) was developed. It can be applied to APS cases and potentially adapted for use by other professionals and for use in other states. Implementation of the tool into APS practice, policy, procedures, and training of personnel will depend on the initiative of APS management. Future work will need to address the reliability and validity of CUIST.

### KEYWORDS

Adult protective services;  
California Undue Influence  
Screening Tool; elder abuse;  
undue influence

## Introduction

Undue influence is a relatively new focus in the field of elder abuse and neglect. It is generally understood to be a means for gaining control of another person's decision making through unfair pressure or tactics mainly for financial gain, but also for sexual gratification or other benefits such as housing for the influencer. It has long been addressed in the legal field with regard to will and trust contests, contract disputes, and competency or decision-making capacity determinations (Hall, Hall, Myers, & Chapman, 2009). A study of testamentary capacity (the mental capacity to make a will) that retrospectively explored subjects whose capacity was in question found signs of undue influence documented in 56% of the cases (Shulman, Cohen, & Hull, 2005). In addition, undue influence, termed as unfair, excessive, or

coercive persuasion, is well known in other fields and arenas: psychology, sociology, criminology, totalitarian regimes, telemarketing, hostage bonding with captors, cult recruitment and retention, and confidence schemes (Quinn, Goldman, Nerenberg, & Piazza, 2010; Quinn, Nerenberg, Navarro, & Wilber, 2016).

## **Background**

In general, state probate laws and state laws governing California's Adult Protective Services (APS) do not provide a clear definition of undue influence, although the term is commonly used in probate courts and in APS practice (Quinn et al., 2010; Stiegel & Klem, 2007). In the California Probate Code, the term occurs more than 20 times, specifically named as a criterion for the appointment of a conservator of estate (California Probate Code §1801(b)). (California uses the term conservatorship to designate a person or organization appointed by the court to handle the personal and/or financial affairs of another adult. Other states use the term guardianship.) However, there was no definition of undue influence in the Probate Code until 2014. Prior to that date, judges and attorneys relied on judicial case law and Civil Code §1575, which was enacted in 1872 and lists the elements of undue influence as follows:

- (1) The use, by one in whom a confidence is reposed by another, or who holds real or apparent authority over him, of such confidence or authority for the purpose of obtaining an unfair advantage over him;
- (2) In taking an unfair advantage of another's weakness of mind; and
- (3) In taking a grossly oppressive and unfair advantage of another's necessities or distress.

Judges and attorneys relied on this law as well as case law that stems from judicial decisions on individual cases (California Civil Code, 2017).

The lay public and many practitioners frequently assume that an individual must lack capacity or have cognitive deficits to be unduly influenced. While it may take less pressure by an influencer to exert undue influence over someone who has cognitive deficits, undue influence and incapacity frequently occur independent of one another. For instance, In the *Estate of Olson* (1912), a California appellate court found:

Soundness of mind and body does not imply immunity from undue influence. It may require greater ingenuity to unduly influence a person of sound mind and body, and more evidence may be required to show that such a person was overcome than in the case of one weak of body and mine. But history and experience teach that minds of strong men and women have been overborne, and they have

been by a master mind persuaded to consent to what in their sober and normal moments, and free from undue influence, they would not have done (CARA case text, n.d.).

There are stark differences in the nature of undue influence and of capacity. For instance, in screening or assessing for capacity, the practitioner is trying to determine an individual's current state of cognitive functioning, possibly in relation to determining whether the individual can perform certain tasks (e.g., give medical consent, execute a will). The focus in these assessments is on how the brain is functioning in that given snapshot of time. Screening or assessing for undue influence requires focusing on a *process* that has taken place over time and asking whether another individual is exerting pressure on the victim's decision making by using unfair tactics that result in a loss to the victim. Undue influence takes place in a variety of circumstances: hostage situations, domestic violence, cults, prisoners of war, and dictatorships. The constant in undue influence situations is psychological manipulation.

Following the publication of an exploratory study on undue influence in California (Quinn et al., 2010), a new state statute defining undue influence was enacted and became effective on January 1, 2014. It describes undue influence as excessive persuasion that causes another person to act or refrain from acting by overcoming that person's free will and results in inequity (California Probate Code, 2015; California Welfare and Institutions Code, 2015). Pursuant to this law, judges are required to consider four elements: vulnerability of the victim, influencers' apparent authority, actions or tactics used by the influencer, and equity of the result. Not all four elements are required for a judicial determination of undue influence and no one element is considered more important than another one in the law (California Probate Code §86 and California Welfare and Institutions Code §15610.70). Each of the elements provides examples of circumstances or behavior. The new law incorporates past state and case law in California regarding undue influence as well as information gleaned from psychological and social services literature.

While the 2014 California law represents a sea change in the legal arena, it also affects community practitioners in the public and private sectors. APS personnel are the first responders in elder and dependent abuse and neglect and encounter the most cases of abuse of any professional group. Their observations and findings are often included in petitions for conservatorship in California, yet they currently do not have an established method of transmitting their undue influence findings to other practitioners such as law enforcement, attorneys in private practice, neuropsychologists, public guardians, and private-sector attorneys who file petitions for conservatorship for family or professional conservators.

An undue influence screening tool, consistent with the 2014 definition of undue influence in California law, would potentially have several effects. They include (1) creating a common language and approach to undue influence for legal practitioners and community-based organizations for enhanced communication, (2) assisting APS personnel to more clearly identify undue influence processes with their clients, and (3) providing a screening tool for practitioners other than APS.

### ***Review of screening and assessment tools for undue influence***

As part of an earlier exploratory project, an extensive literature review on undue influence focused on coercive persuasion in the fields of psychology, criminology, victimology, and elder abuse, as well as a review of the statutory definitions of undue influence in all 50 states (Quinn et al., 2010). This project focused on reviewing existing tools that address undue influence including undue influence models, capacity assessment tools, and risk assessment tools.

A variety of risk assessment tools are currently used by APS and others to determine whether clients are currently being abused or neglected or whether they are likely to be in the future (Austin, Anthony, Lehning, & Peck, 2007). These tools draw from practitioner insights and research on elder abuse and may be developed at the county level and thus differ from county to county in a state. For instance, the risk assessment tools in the two California counties in this study (San Bernadino and San Francisco) differ. While risk assessment tools do not focus directly on undue influence, they include aspects of undue influence such as evidence of whether the client is acting freely or has cognitive deficits or whether fraud has occurred. Few, if any, of these tools have been tested or validated.

APS personnel may use a capacity assessment tool when they suspect that an elder's victimization stems from impaired decision making. They may look for evidence of cognitive deficits using screening or assessment tools. These tools may also be used to determine whether clients "have capacity" to give or deny consent for services and/or to meaningfully participate in care planning (Falk & Hoffman, 2014; Moye & Marson, 2007).

The ability to perform initial capacity assessments is among the core competencies that the National Adult Protective Services Association has defined for APS workers (NAPSA, 2013). The competency includes proficiency at knowing when and how to refer clients for professional capacity evaluations, interpreting and using assessment information, as well as assessing clients' strengths and social supports, their ability to perform activities of daily living, their histories of making decisions, and their ability to make informed decisions. It further includes achieving an understanding of cultural influences on client decision-making and community standards and the

concept of “negotiated consent.” The *Recommended Minimal Program Standards* is a report published by the National Adult Protection Services Association highlighting the importance of APS training in evaluating clients’ capacity to manage, use, and preserve assets and to recognize vulnerability to financial abuse (NAPSA, 2013).

There is no single, universally accepted assessment or screening tool that satisfies APS needs for detection of cognitive impairment. Commonly used tools include the Mini-Mental State Examination, the Montreal Cognitive Assessment, the Saint Louis University Mental Status, and the Short Portable Mental Status Questionnaire. The elements of cognition that these tools typically evaluate include orientation, word recall, language abilities, attention and calculation, and visuospatial ability (Austin et al., 2007). Some assess for “executive function,” which refers to higher-level cognitive skills such as the ability to plan for the future or switch between cognitive tasks. In recent years, several researchers have focused on those cognitive abilities that play a role in financial decision making (Triebe et al., 2009; Wood & Liu, 2012). None of these tools specifically focus on undue influence, although the newly developed Lichtenberg Financial Decision Rating Scale (Lichtenberg, Stoltman, Ficker, Iris, & Mast, 2015) does include questions about undue influence:

- Have you had any conflicts with anyone about the way you spend money or to whom you give money?
- Has anyone asked you to change your will?
- Has anyone recently told you to stop getting financial advice from someone?

A few efforts have been made to customize a screening tool for undue influence. They include the following.

The SCAM model focuses on susceptibility of victims, confidential relationships between victims and abusers, active procurement of assets, and monetary loss. This model was developed by a neuropsychologist for use in clinical and forensic neuropsychological evaluations (Bernatz, n.d.).

The IDEAL model (isolation, dependency, emotional manipulation and/or exploitation of a vulnerability, acquiescence, and loss) applies to undue influence used to exploit elders and was developed by a physician and forensic psychiatric consultant. It draws from the literature of human manipulation found in the psychiatric, psychological, and sociological literatures as well as statutes, case law, and legal theory (Blum, n.d.).

The Undue Influence Wheel, developed by a social worker and two elder law attorneys, is a graphic representation of undue influence that is based on the assumption that undue influence is akin to domestic violence, stalking, and sexual assault in which predatory perpetrators “groom” victims to gain

control. It has been used in training to APS and other professional groups (Brandl, Heisler, & Stiegel, 2006).

The British Columbia Law Institute issued a guide for attorneys and notaries that provides focus on recognizing undue influence and taking practical steps when preparing wills. The guide, *Recommended Practices for Wills Practitioners Relating to Potential Undue Influence: A Guide*, contributes to the body of knowledge on undue influence in legal contexts as well as being instructive to other professionals concerned about undue influence. In addition to assisting the reader with recognizing undue influence, the authors describe practical steps that can be taken. A reference aid provides a checklist of recommended practices and a decision-making flowchart (British Columbia Law Institute, 2011).

A tool used to assess undue influence in the legal context (e.g., in contract law and will contests) is the four-pronged SODR model (SODR stands for Susceptibility of the supposed victim, Opportunity for the exertion of undue influence, Disposition to exert undue influence, and Result of the undue influence). States apply SODR in various ways. Wisconsin, for example, uses the SODR model as one of two tests to screen for undue influence in will contests. Contesters must prove the four elements by clear, satisfactory, and convincing evidence. However, once three of the elements are proven, there need only be a slight showing of the fourth (Quinn et al., 2010).

The International Psychogeriatric Association Task Force on Testamentary Capacity and Undue Influence, a group of professionals from the legal, medical, and psychology fields, attempted to reach consensus on the definition of undue influence and provide guidelines for assessing risk factors that builds upon earlier work addressing will contests (Peisah et al., 2009). The group identified three areas of risk: (1) social or environmental risk factors such as dependency, isolation, family conflict, and recent bereavement; (2) psychological and physical risk factors such as physical disability, deathbed wills, sexual bargaining, personality disorders, substance abuse, and mental disorders including dementia, delirium, and mood and paranoid disorders; and (3) legal risk factors such as unnatural provisions in a will, or provisions not in keeping with previous wishes of the person making the will, and the instigation or procurement of a will by a beneficiary.

Anecdotal evidence suggests that neuropsychologists and others are increasingly providing evaluations, often using testing that elicits susceptibility to undue influence in conservatorship petitions and other legal proceedings. Elder abuse multidisciplinary teams are also evaluating undue influence within the context of financial abuse (Horning, Wilkins, Dhanani, & Henriques, 2013).

In California, two training models are being used to train those involved in the investigation of elder abuse including APS and law enforcement. Project MASTER at San Diego State University, for example, has created a module on undue influence that is part of a training on financial abuse (San Diego



State University, [n.d.-a](#)) Another training module for APS developed by Project MASTER focuses on undue influence by professionals (San Diego State University, [n.d.-b](#)).

Although all these tools and models have been developed to heighten general awareness and understanding of undue influence, they are limited in scope and application, failing, for example, to adequately screen for the broad range of conduct and situations that APS workers commonly encounter. They are not specific to APS field practice and they do not take into account the change in the definition of undue influence enacted in 2014 in California. As a result, existing tools fail to elicit information that could identify the need for interventions and services as well as highlight existing or emergent patterns or vulnerabilities that could potentially signal the need for preventive approaches. In light of these limitations, the review concluded that an undue influence screening tool was needed that does the following:

- Reflects APS mandates and roles in investigating and responding to abuse, which includes contacting public guardians, responsible family members, attorneys, police, professional associations, and long-term care ombudsmen.
- Reflects new statutory definitions of undue influence as codified in California Probate Code §86 and Welfare and Institutions Codes §15610.30 and §15610.70.
- Reflects other relevant civil statutory definitions and criteria that may suggest heightened risk for undue influence, including Probate Code §811 (2–4), which addresses deficits in understanding and appreciating quantities, abstract reasoning, the ability to plan, organize, and carry out actions in one's own rational self-interest, and the ability to modulate mood.
- Considers relevant criteria contained in California Jury Instruction (CALJIC) No 1.23, which is used to instruct jurors in criminal cases of theft how to interpret “consent.”
- Highlights patterns of undue influence that jeopardize clients' safety and independence, which can be addressed through nonlegal remedies and interventions.
- Suggests the need for safeguards to prevent undue influence abuse and exploitation.

## Methods

The aim of the study was to develop an undue influence screening tool for APS personnel in California. Rogers' theory (2003) provided the framework for the project, setting objectives to learn about APS practice knowledge of undue influence, along with understanding what might facilitate or challenge



the screening of undue influence within APS policy and practices. Multiple methods favored a comprehensive review by practice and content experts. Using four focus groups comprising APS personnel, input was provided by staff from two urban counties in California ( $N = 33$ ), followed by an online survey of their response to the drafted screening tool. Evaluation of the draft undue influence screening tool was also provided by a panel of four experts from different disciplines and two APS administrators to aid in refining the final California Undue Influence Screening Tool (CUIST). The Azusa Pacific University Institutional Review Board approved the study.

### ***Focus groups***

Two focus groups were conducted with a convenience sample of APS personnel in northern San Francisco County ( $n = 9$ ,  $n = 7$ , 48%) and two in southern San Bernardino County ( $n = 8$ ,  $n = 9$ , 52%); both are urban settings. APS supervisors in these counties were the initial contacts and, once informed of the project aim, they were instrumental in coordinating and encouraging staff participation. Conference room space was provided at both locations and the only incentive offered was the provision of lunch. Participation was voluntary and the sessions were recorded. Participants were given written information about the project and signed consent forms before participation. Demographic questionnaires were completed and collected data on gender, race, education level, previous training on undue influence, awareness of the current legal definition of undue influence, and years of APS experience. Two members of the project team, both experienced social workers, facilitated the four focus groups. A semi-structured protocol consisting of seven questions with prompts was developed and administered during these groups (see Appendix A). Following the focus group protocol, facilitators educated participants verbally and in writing about the definition of undue influence recently enacted in California law (January 1, 2014).

The recorded focus group content was transcribed using a professional transcription company and uploaded in NVivo 10 to aid in analysis. Two raters analyzed the data content: One was the project research director who attended the focus groups and the other was a doctoral student who did not attend the focus groups but is experienced with applied research involving APS personnel. Each independently coded the transcript data using a thematic approach informed by the domains outlined in the legal definition of undue influence in the Probate and Welfare and Institutions codes. The thematic domains included (1) vulnerability of victim, (2) apparent authority of alleged influencer, (3) tactics, and (4) fairness of the outcome or consequences of the undue influence. The data were also analyzed for a theme on (5) developing the undue influence screening tool.

### ***Survey of APS personnel***

Focus group participants were informed at the time of the face-to-face meeting that once the draft screening tool was developed, they would be asked to pilot the first draft and provide feedback to enhance the tool's ability to aid APS personnel with the detection of undue influence. Eight months following the final focus group, supervisors were notified that the tool was ready for distribution and piloting by the participants with two or more cases of suspected undue influence, either current or past cases. The goal was to apply the draft undue influence screening questions to actual cases of suspected undue influence to determine how well the screening tool (as drafted) would identify factors of undue influence and align with their current practices. Two weeks after the instructions and tool were provided, an online survey was sent using the SurveyMonkey application. Participants were asked to answer five questions estimated to take 10 minutes to complete. They were informed that their answers would be confidential and only reported in the aggregate. To encourage response, the time window was extended from 2 to 4 weeks and supervisors were asked to remind participants to complete the survey.

### ***Review by experts and APS administrators***

Project staff conducted structured interviews with four professionals in the field of elder abuse prevention who have specialized expertise in topics pertinent to the project. The experts included (1) a licensed psychologist who specializes in forensic neuropsychology; (2) an expert in the criminal prosecution of elder abuse; (3) a probate attorney with extensive experience with conservatorships, estate planning, and undue influence; and (4) a professor of gerontology with expertise in elder abuse, APS, and the development of assessment and screening tools. The purpose of the interviews was to solicit feedback on the draft screening tool. An interview protocol (see Appendix B) was developed to capture the experts' general impressions, specific feedback on format and content, suggestions for other groups that stand to benefit from the tool or adaptations to it, and other concerns or recommendations. Two APS administrators were also provided with the preliminary screening tool and then interviewed: one from the county level and one from the state level. Both had extensive experience in the field of APS.

## **Results**

### ***Focus group findings***

Thirty-three APS personnel (line staff and supervisors) participated in the focus groups; nearly three-quarters were female (73%), just over half

identified as Caucasian (55%), a fifth as African American (21%) and the remainder were of Hispanic (15%) and Asian descent (9%). The majority had a master's-level education ( $n = 27$ ; 82%) with several years of APS experience ( $M = 9.3$  years, range = 0.5–28 years). Most ( $n = 31$ ; 94%) indicated that they had previous training with undue influence. Overall awareness and understanding of the aspects of undue influence were high, although only two (6%) had knowledge of the new legal definition (effective the previous year). In addition, several participants did not appear to understand the distinction between undue influence and capacity for decision making.

### ***Vulnerability of victim***

Focus group members identified vulnerabilities that made their clients susceptible to undue influence from all domains of a comprehensive assessment: biological, psychological, sociological, and cultural factors. Impaired functional abilities were discussed as a consequence of myriad situations and challenges. Primary themes identified within the domain of vulnerability included dependency on others, isolation, and fear.

***Dependency.*** The APS personnel frequently discussed dyads in which their client was dependent on another person for care and assistance as well as for emotional and/or social supports as a result of physical and cognitive assessments. Although some participants thought that only those with cognitive impairment could be unduly influenced, others disagreed and noted that anyone can be unduly influenced. The participants described clients as experiencing various emotional states, such as grief, loneliness, and depression, that affect judgments and decision making, including the diminished ability to recognize and/or resist undue influence. They also noted that being monolingual in a nondominant language also led to culturally related dependencies.

Although dependency of the victim was discussed by focus group participants, they also noted that some influencers, namely adult children, were in fact the ones who were dependent on their aging parents. Examples included victims being asked to provide for adult influencers' car purchases, daily expenses, housing, medical bills, or college tuition.

***Isolation.*** Disabled and older adults can become isolated by their own choice, by the death of a spouse or contemporaries, because their adult children live at a distance, and/or by mobility problems. Dependency and isolation set the stage for undue influence as suggested by the comments from APS personnel. In some cases, the elder may be willing to enter into a less than ideal relationship in order to avoid isolation.

***Fear.*** APS workers described how clients' feared losing independence, control, or a cherished relationship. Fear can relate to impending changes, such

as the need for more care or the expense that may be involved as well as the prospect of living in a nursing home. Fear can also relate to a serious threat of harm or death for not following the wishes of the perpetrator.

### ***Influencer apparent authority***

Focus group participants described how the role of power fits into the process of undue influence. Actions of various professions were discussed, such as real estate agents befriending elders and convincing them to sign over their home to the real estate agent for protection.

Authority or power may be based on the influencer's professional knowledge or role (e.g., doctor, financial advisor, contractor, or clergy), or it may stem from their role in providing physical and/or psychological support. Authority may develop from the sense of trust developed in the relationship, whether it is a romantic relationship, a friendship, or a long-term relationship from earlier days in the victim's life. Focus group members also described authority drawn from cultural norms or obligations, such as religious faith that was exploited when lucrative opportunities became known, such as the arrival of an inheritance. Authority or power could be derived from victims' reliance on influencers for knowledge or hands-on care, such as those relationships premised on enabling victims to live in their own homes and prevent them from being institutionalized.

### ***Actions or tactics used by influencer***

APS personnel described a multitude of scenarios resulting in benefits to influencers at the expense of victims. Each group described innocuous situations and relationships in which perpetrators gradually "wiggled into" positions of control and began unduly influencing victims. Group members also discussed how abusers determine the vulnerabilities of their victims and then adjust their undue influence tactics accordingly. They may play upon victims' trust, physical decline/impairment, or psychological stress or use important knowledge or private information they have about victims to heighten vulnerability. They may also exploit victims' fears, love, guilt, happiness, loneliness, shame, and/or humiliation. Overarching themes included manipulation, processes over time, and deliberate isolation.

***Manipulation.*** Focus group participants most often discussed manipulation as a tactic for undue influence. The sense of utilizing vulnerabilities and seizing opportunities that only benefit the influencer/abuser came in many creative situations that manipulated the victim into relinquishing what the influencer wanted.

***Processes over time.*** There was general agreement among the focus group members that there is a temporal component to undue influence, such that it

frequently occurs over time. Those who unduly influence others are often willing to “groom” their victims for months and sometimes years. They described the influencer as being able to “read” their victims, to know what they want and need, and to figure out the best way to “wiggle” into the person’s life.

***Deliberate isolation.*** Focus group participants described isolation as an existing vulnerability but also as a deliberate tactic. Examples were given as to how an influencer worked to isolate victims by “poisoning” existing relationships with negative talk. Other examples of creating isolation as a tactic included firing established caregivers, canceling medical appointments and other trips for medicine or care, and finding ways to tarnish the victim’s reputation and exploit their vulnerabilities.

### ***Fairness of the result or consequences domain***

The participants identified overarching themes pertaining to the consequences of undue influence. These included psychological repercussions, loss of assets, physical harm, neglect, and self-neglect. The psychological consequences of undue influence include depression, shame, loss of motivation for living, and even suicidality. Financial losses cited were the loss of homes and savings.

### **APS focus group suggestions for an undue influence screening tool**

Focus group members indicated that a screening tool to detect undue influence in APS cases would be helpful especially in communicating their findings to other professions. The participants welcomed the idea of a screening tool because they felt it would organize thinking and documentation on undue influence and would create a uniform language for talking about the subject with other professionals. They also requested that there be instructions and that the form be kept brief. They were uncertain whether it should be used in every case or only in some cases. Stated benefits included the following:

- Organize thinking about undue influence in individual cases.
- Organize documentation.
- Provide a uniform approach to undue influence, consistent with California law, for all professionals who have contact with the client.
- Provide documentation for future contacts with client.
- Provide more credibility to law enforcement and other professionals, especially if the California code sections are on the form.
- Precursor to neuropsychological examination.

- Strengthen reports regarding undue influence for conservatorship referrals to public guardian, private attorneys, and private professional conservators.

Focus group members also expressed concerns about a screening tool:

- When would the tool get used?
- Would it be used with every case?
- If not, would there be a trigger question on the forms to indicate that the form should be used, such as:
  - When something feels questionable?
  - Only if the person does not have capacity?
- What if the client is too impaired to participate?
- Should it be a separate form or should it be integrated with existing forms already in use?
- The form should be as short as possible.

### ***Development of the CUIST***

An undue influence screening tool was developed by drawing from the elements listed in Probate Code §86 and Welfare and Institutions Code §15610.70, comments from the focus groups, and existing risk tools developed and used by the counties that participated in the focus groups (San Francisco and San Bernardino). The following factors gleaned from the above sources guided the development of the draft tool:

- Needs to be easily and quickly completed.
- One-page tool is desirable, if possible.
- Brief but complete in covering the four factors: victim vulnerability, alleged influencer authority, tactics, and outcome.
- Supportive tool for: petition for probate conservatorship, referral to law enforcement, preparation of estate planning documents, and referral to neuropsychologist.

### ***Survey of APS personnel***

Once the draft of CUIST was developed, focus group members were asked to pilot the draft tool. Of the total sample of APS focus group participants ( $n = 33$ ), three were no longer with the department and several were supervisors who did not have a caseload of clients. At least one supervisor did complete the survey. Of those participants with caseloads to draw from ( $n = 19$ ), 58% ( $n = 11$ ) completed the survey. [Table 1](#) provides the survey

**Table 1.** Legal definition: Probate Code §86 and Welfare and Institutions Code §15610.70.\* “Undue influence” means excessive persuasion that causes another person to act or refrain from acting by overcoming that person’s free will and results in inequity. In determining whether a result was produced by undue influence, all of the following shall be considered\*\*:

Vulnerability of the victim	Influencer’s apparent authority	Actions or tactics used by the influencer	Equity of the result
Evidence of vulnerability may include, but is not limited to, incapacity, illness, disability, injury, age, education, impaired cognitive function, emotional distress, isolation, or dependency and whether the influencer knew or should have known of the alleged victim’s vulnerability.	Evidence of apparent authority may include, but is not limited to, status as a fiduciary, family member, care provider, health care professional, legal professional, spiritual advisor, expert, or other qualification.	Evidence of actions or tactics used may include, but is not limited to, all of the following: (a) controlling necessities of life, medication, the victim’s interactions with others, access to information, or sleep; (b) use of affection, intimidation, or coercion; and (c) initiation of changes in personal or property rights, use of haste or secrecy in effecting those changes, effecting changes at inappropriate times and places, and claims of expertise in effecting changes.	Evidence of the equity of the result may include, but is not limited to, the economic consequences to the victim, any divergence from the victim’s prior intent or course of conduct or dealing, the relationship of the value conveyed to the appropriateness of the change in light of the length and nature of the relationship. Evidence of an inequitable result, without more, is not sufficient to prove undue influence.

\*Probate Code §86 states that “undue influence” has the same meaning as defined in Section 15610.70 of the Welfare and Institutions code. The actual language contained in the chart can be found in that Welfare and Institutions code.

\*\*Not all four categories are required for a judicial determination of “undue influence.”

questions (shaded areas), the answers received (bolded), and a brief summary of the results (right column). Where possible, the survey asked for narrative explanation of answers (denoted with \*) to encourage more feedback and achieve better clarity about APS personnel perspectives on the answers provided.

The survey indicated that of the 11 respondents, 7 APS personnel were able to pilot the draft screening tool, with 15 APS cases of suspected undue influence (averaging 2.1 cases each). There were four respondents to the survey who had not piloted the screening tool for a variety of reasons; most who opted out indicated they did not currently have a case involving suspected undue influence. Feedback on the screening tool itself was that it met their expectations (90%), it was clear and easy to complete (90%), and overall it would be a useful addition to their APS assessments (90%). Suggested edits involved the addition of instructions for better clarity and to keep the tool as brief and efficient as possible.

Results were encouraging and informed the project team of the facilitators and challenges (Rogers, 2003) of having an undue influence screening tool added to APS personnel practice (see Table 2). There was strong agreement



**Table 2.** Survey following pilot of draft undue influence screening tool.

Questions	Answers	Summary and comments
1. Please indicate how many times you completed the UI Screening Tool.	Screening tools completed: 0 1 2 3 4 <b>4 2 3 1 1</b>	APS pilot with 15 cases of suspected abuse by 7 APS personnel ( $M = 2$ cases each); 4 workers answered survey without using the screening tool.
Please explain:		*2 former clients. Why are there no instructions? *No opportunity for use at this time. *I only had one client recently that I was concerned re: undue influence. *Few cases as supervisor. *Report of financial abuse. *Unfortunately, due to the cases received during the pilot, I was unable to use the tool. Note: 3+ = 3, 4
2. Please provide your general feedback to the following statements:	Strongly disagree–strongly agree 1 2 3 4	Results:
a. After discussing undue influence in the focus group, this UI Screening Tool met my expectations.	<b>1 7 2</b>	Majority felt tool met their expectations (90%).
b. I found the UI Screening Tool to be clear and easy to complete.	<b>1 5 4</b>	Majority found it clear and easy to complete (90%).
c. This screening tool is a useful addition to the risk assessment I am currently using.	<b>1 4 5</b>	Majority agreement that the tool is a useful addition to their APS assessment (90%).
d. The UI Screening Tool can increase the likelihood of detecting undue influence.	<b>6 3</b>	Unanimous support that the tool would increase detection ( $n = 9$ , no answer by 2).
e. I am satisfied with the project's UI Screening Tool.	<b>1 1 6 2</b>	High satisfaction with first draft of screening tool (80%).
f. I feel my input and needs have been considered in the development of the tool.	<b>1 6 2</b>	Majority felt their input and needs were considered (89%).
g. Please explain:		*No instructions to score the measures. *Gave input during screening tool development. *For some reason I was expecting some sort of numbered ranking to help decide on rating the undue influence. *The tool is user friendly, captures many "red flags."
3. Do you have suggested edits for the UI Screening Tool?	No changes–major edits needed 1 2 3 4 <b>6 4</b>	Results:
Please explain:		Feedback for edits provided by over a third of those surveyed (40%, $n = 10$ ). *Instructions. *More streamline: less pages. *Question 4–directions would be helpful. *Not sure, since social workers might give more input. *I did not get to spend enough time to suggest edits.

(Continued)

**Table 2.** (Continued).

Questions	Answers	Summary and comments
<b>4.</b> Please comment on your readiness and willingness to use the UI Screening Tool:	Strongly disagree– strongly agree 1 2 3 4	<b>Results:</b>
a. APS training is needed to detect undue influence situations.	<b>6 5</b>	Unanimous agreement that APS needs training to detect undue influence ( $n = 11$ ).
b. Directions are needed to clarify how to use this UI Screening Tool.	<b>1 6 3</b>	Majority indicated directions are needed (90%).
c. I suggest this UI Screening Tool be used routinely in APS practice.	<b>1 8 1</b>	Majority indicated the tool be used routinely in APS practice (90%, $n = 10$ ).
d. Please comment on how you think the tool can be useful:		*Training and scoring instructions. *For new APS workers I think it can be valuable in trying to assess those types of cases. *In working with possible conservatorship cases. *It's a good tool for allegations of financial abuse. *Undue influence can be hard to detect and it is helpful to have things to look for to cue you it may be a factor in the case. *Just use on cases where capacity is in question.
<b>5.</b> Please indicate any other comments:		*Unfortunately, I have not utilized the undue influence screening. Thus, I am unable to give detailed feedback. *There may be need to fine tune the screening tool which may include providing directions but as it is, it's a great start out the gates. I like it very much so I anticipate using it regularly. *I am sorry that I did not have an opportunity to use the tool[;] however, looking back at previous cases, I am sure having something like this to reference as appropriate would be helpful.

\*Denotes direct respondent comment.  
UI = undue influence; APS = Adult Protective Services.

that the tool would increase detection of undue influence (82%;  $n = 9$ , no response = 2) and that the screening tool for undue influence should be used routinely in APS practice (91%,  $n = 10$ ). The overwhelming majority agreed that APS training is needed to detect undue influence (100%,  $n = 11$ ).

***Review by APS administrators and experts***

The experts ( $n = 4$ ) received copies of the interview protocol and drafts of the tool in advance of the interviews. Two members of the project staff conducted each interview. Panelists were given the chance to make general comments about the tool. Several experts offered additional impressions during and at the close of interviews as well. All agreed that the tool would

contribute to APS workers' understanding of undue influence and could potentially have far-reaching application and impact. Comments about the tool and its benefits included the following:

- I wish I'd had this tool 20 years ago when I was first starting.
- The content is spot on, as to what I see.
- Even if you don't find undue influence, the tool may get people thinking about it undue influence.
- I would absolutely use the tool as evidence in criminal cases; it would strengthen the case.
- Really interesting. There will be broad interest in the field of aging.
- [The tool] puts parameters on an issue we all need to know more about.
- The categories make sense given the literature on undue influence. They are clear. Everything is there and succinct.
- [It would] help attorneys present cases by giving them categories to work from.

The experts were then asked to comment on specific sections of the tool relating to the four components of undue influence. All offered suggestions for specific changes to the wording, formatting, and scoring of the draft tool. A recurrent theme was the need for more thorough instructions for completing the screening tool. In particular, they called for greater clarity and guidance in how to use the rating systems (the draft tool included scales to indicate the relative strength of specific indicators) and made suggestions for modifying the scales. Two of the panel members expressed concerns that some of the terminology used in the tool may not be understood by all APS workers, potentially leading to errors and inaccuracies in how the forms are completed and the conclusions drawn from them. Both suggested replacing terms that may be unfamiliar to APS with lay language (e.g., replacing "cognitive deficits" with "memory problems"). They pointed out that APS personnel have varying levels of education and training, with one observing that in her own teaching, she "teaches to the person I think has the least amount of knowledge on a subject," suggesting that this may be an appropriate standard to apply to the tool as well. The same expert further observed that there is a dearth of research on APS workers' understanding of core concepts and terminology used in practice and that more research in this area is needed. Concerns about potential inaccuracies in completing the tool and how they might impact conclusions prompted questions about how the tool would potentially be used and the need for clarification in this regard. One panelist suggested that if the tools were subpoenaed in criminal cases or submitted to courts (e.g., included in petitions for conservatorship), inaccurately completed tools or unsubstantiated conclusions could negatively impact case outcomes and reflect poorly on workers and their agencies. Of

particular concern was the use of the rating scales to indicate whether undue influence was occurring based on APS workers' impressions. Experts further raised concerns about the extent to which workers' appraisals of situations vary and suggested the need for additional research on the reliability of the tool, the consistency of findings by workers, and the extent to which the tool reflects current understanding of undue influence by professionals, courts, and researchers. Despite these concerns, the experts agreed that the tool could be valuable to professionals beyond the field of APS and in other settings.

Experts identified the following groups that they believed could benefit from the screening tool:

- Public officials involved in elder abuse cases, including city attorneys, public defenders, district attorneys, public guardians, and probate court investigators.
- Private attorneys and others involved in estate planning.
- Law enforcement personnel, including detectives who investigate crimes with an eye toward prosecution.

The experts further offered comments on the need for changes to California law with respect to undue influence. Referring to the fact that the term "undue influence" is currently mentioned in the criteria for conservatorship of estate but not in the criteria for conservatorship of person, one expert suggested that undue influence also be considered in relation to conservatorship of person. Two others expressed support for defining undue influence as a factor in criminal elder financial abuse. Although these comments do not pertain to the screening tool directly, they suggest that additional applications of the tool may be considered in the future.

One expert pointed out that, "This is the first time a screening tool addressing undue influence has been constructed. It can be validated and refined later, perhaps for various potential user groups." Suggestions for specific steps in validating the tool and approaches and resources for doing so were also provided, such as the use of cognitive interviewing techniques to assess what individuals think words or terms mean and resources for converting technical terms into lay language. It was pointed out that as APS personnel increasingly interface with the civil and criminal justice systems, the extent to which they understand the meaning of legal terminology and concepts is particularly important.

As thought leaders in their respective fields, the experts may serve as catalysts for future inquiry, public policy, and innovation. Their interest and endorsement can potentially facilitate the expanded use of the tool.

Following interviews with experts, project staff sought additional information and insights pertaining to concerns raised during the expert interviews.

Discussions were held with two APS administrators to discuss the expert panelists' concerns about APS workers' level of comprehension. Specifically, they were asked to comment on the extent to which terminology and concepts used in the tool conformed to those currently used in APS practice. They were further asked for suggestions for needed modifications. Some differences were observed in their appraisals of APS workers' level of comprehension, thereby supporting the need for further discussion and research. Recommendations made by these APS administrators were subsequently used in revising the screening tool. The APS administrators offered to assist in arranging for training APS workers in the use of the tool once it is completed. Possible venues for training include the state's four regional academies, overseen by the California Department of Social Services.

### ***Revisions to CUIST***

To finalize CUIST, the information gathered from the activities of the project were reviewed and incorporated into the tool:

- California Probate Code §86 and Welfare and Institutions Code §15610.70
- Literature review
- Focus group findings
- Survey of APS personnel who piloted CUIST
- Experts from the fields of civil and criminal law, neuropsychology, and aging
- APS administrators
- Review of existing risk assessment tools from two selected counties

Considerations that applied to the revision of the screening tool included refining the terminology used to achieve greater accuracy, consistency, and ease of use. A major modification was the removal of the rating system indicating APS workers' perceptions of the strength of the evidence relating to the four elements or categories of undue influence (client vulnerability, power of influencer, tactics used, and unfair outcomes). A question indicating users' conclusions about whether undue influence had occurred was also removed. It had been assumed that these conclusions could potentially be helpful in determining what interventions would be appropriate when undue influence was suspected and the urgency of the response. The strength of the elements might further suggest noteworthy relationships among them that could have relevance for practice. For example, one might expect that the greater the vulnerability of a client, the less power the influencer might need to influence him or her. Similarly, the extent of the losses or the level of unfairness or impropriety might suggest the level of resources that APS or others would be justified in expending. Despite these potential advantages,

the rating system was removed pending further study. This decision was made in response to the concerns described in the methodology section, including concerns about the consequences of inaccurate or unjustified findings if the tools were subpoenaed or included in legal actions (e.g., petitions for conservatorship). In the absence of testing to guide the development of a rating system and substantiate its reliability and validity, the inclusion of a rating scale was deemed premature.

CUIST was revised to have users (1) check a box following each of the four categories indicating whether there is evidence present in the category and (2) complete a summary, indicating whether there are positive findings in one or more of the four categories. The tool also lists possible follow-up steps to completing the tool and notes that specific steps will depend on agency policy and protocol. The project staff developed the final CUIST as well as instructions for completion (see Appendix C).

## Discussion

The responses from APS personnel; experts in the fields of law, psychology, and aging; and APS administration describe that these elder abuse-related professionals find an undue influence screening tool to be a worthwhile addition to APS practice and potentially to practice in other fields. Reviewers found the elements contained in the draft screening tool to be consistent with their understanding of, and experiences with, undue influence. However, this study introduces an approach with research needed on the CUIST to continue to refine the content of the tool. A survey of APS workers who piloted the tool with 15 APS client cases provided encouragement that the tool can be used to enhance APS practice. Further research is needed to quantify the strength (or weight) of the elements of undue influence and the relationships among them. Methods could include a factor analysis to determine factor structure and interpretation of factor scores. Additional study can move to testing CUIST's reliability and validity in identifying and predicting undue influence. Important to future work is determining user comprehension around terms and concepts used in CUIST. While efforts were made to ensure that the language contained in the screening tool reflects that used in the field, concerns remain regarding APS workers' understanding of certain terms and concepts, particularly those pertaining to cognition and its relationship to undue influence. As project staff explored worker comprehension with respect to undue influence, they learned that this reflected broader concerns in the APS field. For example, the Protective Services Operations Committee of the County Welfare Directors Association of California is currently exploring workers' comprehension of multiple terms and concepts commonly used in APS assessment tools and practice. These concerns have further raised questions about

variations in the educational levels of APS frontline workers in California. It has been observed, for example, that APS personnel in urban areas of California are likely to have graduate degrees (82% of the focus groups members had master's-level degrees in social service-related fields), while those in smaller counties are more likely to have bachelor's degrees. Although the need for greater attention to APS workers' comprehension levels and variations in education exceeds the scope of this project, the concerns raised by CUIST may underscore key challenges for the future, as more cases of elder abuse reach the criminal and civil justice systems, given the potential applications of CUIST.

Despite CUIST's limitations, study participants' enthusiasm for the tool suggests that even in its current form, this tool has value to guide investigations and assist APS personnel in assessing situations, documenting impressions, and signaling the need for follow-up. As the initial step to developing an undue influence screening tool for APS personnel, CUIST provides guidelines, framework, and a starting point in tackling this complex process of abuse. Incorporating CUIST into routine APS practice will require changes to APS policy and protocols. Some of the issues that will need discussion and resolution are the following:

- (1) When should CUIST be used? Should CUIST screenings be conducted with all new clients or only when undue influence is suspected? If it is discretionary, what would trigger its use?
- (2) Are modifications to CUIST needed to conform to other formats or forms currently in use?
- (3) Are electronic formats the easiest way for APS personnel to complete CUIST?

Informants also identified additional groups who can potentially benefit from the tool. Because APS clients may require conservatorship and APS workers lack standing to petition on clients' behalf, those sources to whom APS workers typically refer these clients are among those who stand to benefit from CUIST. These include public guardians, professional conservators who work for nonprofit agencies or are in private practice, and professionals who advise families on legal matters, including estate planners. Others who stand to benefit include police investigators, prosecutors, estate planners and other lawyers, and judges.

Two legislative issues were mentioned in the focus groups and by the expert panelists. As described earlier, there is no specific mention of undue influence in the Probate Code criteria for the appointment of a conservator of person (§1801(a)) that addresses nonfinancial matters. It was noted that undue influence can be a factor in inducing a vulnerable individual to marry, to adopt another adult, to engage in exploitive sexual activity, and to engage



in other detrimental activity. Including the term undue influence would address those nonfinancial situations. Focus group and expert panel members also recommended adding undue influence to the definition of financial elder abuse contained in California Penal Code sections 368(d) and 368(e). Although *People v. Brock* (2006) 143 Cal. App. 4th 1266 established that undue influence is not a crime under Penal Code §368, the appellate court that ruled in the case noted, “Legally supportable theories that vitiate the consent of an elder or dependent adult would support the legislature’s previously stated intent to provide special consideration and protection to elders and dependent adults because of their increased vulnerability.” An attempt to affect this change failed in 2008 (SB 1259); however, with the advent of the 2014 civil law more closely defining and describing undue influence, the criminal system may take notice and act.

Education was stressed by both the focus group participants and the expert panel members about undue influence and the use of CUIST for frontline APS personnel. Specific issues include the following:

- (1) How much education will be required to introduce CUIST to APS frontline personnel?
- (2) What other groups can benefit?
- (3) Who will develop the instructional manuals and who will do the teaching?
- (4) What methods are available or needed to help APS personnel understand the difference between capacity and undue influence?

Training in the use of CUIST should be designed with input from potential users to reflect their preferred formats and trusted sources of information. The use of multidisciplinary training can foster a common understanding about undue influence and build relationships. Professional groups that can benefit include law enforcement, the public guardian, probate court investigators, physicians, dentists, nurse practitioners, hospital discharge planners, and long-term care ombudsmen. Personnel from community agencies, including day care centers, home health agencies, the Village Movement and others may also benefit. Methods of instruction may include webinars, teleconferences, and regional and state conferences. APS administration sees value in facilitating trainings through the California Department of Social Services regional training program and the California County Welfare Directors Association.

## Conclusions

Although the subject of undue influence, also known as persuasive coercion, has been known in the fields of law, social services, and APS for decades and even centuries (in the legal field), the subject has been ill defined and poorly

understood. With the advent of the modernized definition of undue influence enacted into California law in 2014, it became possible to develop a screening tool for APS personnel, the first responders in elder abuse and neglect as well as undue influence. Future work will include testing the validity and reliability of CUIST. In this study, face validity was endorsed by APS frontline personnel, APS administrators, and expert panelists, all of whom practice in California.

CUIST is based on California law and the state's APS practices, yet the subject of undue influence is a frequent and common concern in APS and legal circles throughout the United States. As crimes involving undue influence continue to surface in escalating numbers, the findings from this project are expected to be useful to jurisdictions beyond California.

## Acknowledgments

The authors acknowledge and thank Jeanine Yonashiro-Cho, MSG, for her assistance with analyzing the focus group data for this project.

## Funding

This research was supported by a 2015 Academic Research Grant Award from the Borchard Foundation Center on Law and Aging.

## References

- Austin, M. J., Anthony, E. K., Lehning, A. J., & Peck, M. D. (2007). *Instruments for assessing elder mistreatment: Implications for Adult Protective Services*. Berkeley, CA: University of California at Berkeley, School of Social Welfare (BASSC). Retrieved from [http://cssr.berkeley.edu/research\\_units/bassc/documents/C61602\\_9\\_web.pdf](http://cssr.berkeley.edu/research_units/bassc/documents/C61602_9_web.pdf)
- Bernatz, S. (n.d.). *The Scam model*. Retrieved from <http://bernatzexperts.com/areas-ofexpertise/scam%E2%84%A2-model>
- Blum, B. (n.d.). *Undue influence models—IDEAL*. Retrieved from [http://www.bennettblummd.com/undue\\_influence\\_ideal\\_model.html](http://www.bennettblummd.com/undue_influence_ideal_model.html)
- Brandl, B., Heisler, C. J., & Stiegel, L. A. (2006). *Undue influence: The criminal justice response*. YWCA Omaha. Retrieved from [http://www.ncall.us/sites/ncall.us/files/resources/Undue\\_Infl\\_Trainer.pdf](http://www.ncall.us/sites/ncall.us/files/resources/Undue_Infl_Trainer.pdf)
- British Columbia Law Institute. (2011, October). *Recommended practices for wills practitioners relating to potential undue influence: A guide*. Report no. 61. retrieved from <http://www.lawsociety.bc.ca/docs/practice/resources/guide-wills.pdf>
- California Civil Code. (2017). Retrieved from <http://codes.findlaw.com/ca/civil-code/civ-sect-1575.html>
- California Probate Code. (2015). *Code section 86*. San Francisco, CA: Thomson Reuters.
- California Welfare and Institutions Code. (2015). *Code section 15610.70*. San Francisco, CA: Thomson Reuters.
- CARA casetext. (n.d.). Estate of Olson, 19 Cal. App.379, 386 (1912). Retrieved from <https://casetext.com/case/estate-of-olson-1>

- Falk, E., & Hoffman, N. (2014). The role of capacity assessments in elder abuse investigations and guardianships. *Clinics in Geriatric Medicine*, 30(4), 851–868. doi:10.1016/j.cger.2014.08.009
- Hall, R. C. W., Hall, R. C. W., Myers, W. C., & Chapman, M. J. (2009, June). *Testamentary capacity: History, physicians' role, requirements, and why wills are challenged*. Retrieved from <http://www.consultant360.com/articles/testamentary-capacity-history-physicians-role-requirements-and-why-wills-are-challenged>
- Horning, S. M., Wilkins, S. S., Dhanani, S., & Henriques, D. (2013). A case of elder abuse and undue influence: Assessment and treatment from a geriatric interdisciplinary team. *Clinical Case Studies*, 5(5), 373–387. doi:10.1177/1534650113496143
- Lichtenberg, P. A., Stoltman, J., Ficker, L. J., Iris, M., & Mast, B. (2015). A person-centered approach to financial capacity assessment: Preliminary development of a new rating scale. *Journal of Elder Abuse & Neglect*, 38(1), 49–67.
- Moye, J., & Marson, D. C. (2007). Assessment of decision-making capacity in older adults: An emerging area of practice and research. *Journal of Gerontology: Series B, Psychological Sciences and Social Sciences*, 62(1), 3–11. doi:10.1093/geronb/62.1.P3
- National Adult Protective Services Association. (2013). *Adult protective services recommended minimum program standards*. Retrieved from <http://www.napsa-now.org/wp-content/uploads/2014/04/Recommended-Program-Standards.pdf>
- Peisah, C. H., Finkel, S., Shulman, K., Melding, P., Luxenberg, J., & Bennett, H. (2009). The wills of older people: Risk factors for undue influence. *International Psychogeriatrics*, 21, 7–15. doi:10.1017/S1041610208008120
- People v. Brock, 143 Cal. App. 4th 1266, U.S. (2006).
- Quinn, M. J., Goldman, E., Nerenberg, L., & Piazza, D. (2010). *Undue influence: Definitions and applications*. San Francisco, CA: California Superior Court. Retrieved from <http://www.courts.ca.gov/documents/UndueInfluence.pdf>
- Quinn, M. J., Nerenberg, L., Navarro, A., & Wilber, K. (2016). *Developing an undue influence screening tool for Adult Protective Services personnel*. Retrieved from [http://www.elderjusticecal.org/docs/developing\\_UI.pdf](http://www.elderjusticecal.org/docs/developing_UI.pdf)
- Rogers, E. M. (2003). *Diffusion of innovations* (5th ed.). New York, NY: Free Press.
- San Diego State University. (n.d.-a). *Academy for Professional Excellence, Undue influence mini-module eLearning*. Retrieved from <http://theacademy.sdsu.edu/mastercurriculum/undue-influence-mini-module-elearning/>
- San Diego State University. (n.d.-b). *Academy for Professional Excellence, Undue influence committed by professionals*. <http://theacademy.sdsu.edu/mastertraining/undue-influence-committed-by-professionals-elearning/>
- Shulman, K. I., Cohen, C. A., & Hull, I. (2005). Psychiatric issues in retrospective challenges of testamentary capacity. *International Journal of Geriatric Psychiatry*, 20(1), 63–69. doi:10.1002/(ISSN)1099-1166
- Stiegel, L., & Klem, E. (2007). *Explanation of the Undue influence: Context, provisions, and citations in Adult Protective Services laws, by state*. Washington, DC: American Bar Association Commission on Law and Aging. Retrieved from [http://www.americanbar.org/content/dam/aba/migrated/aging/about/pdfs/Undue\\_Influence\\_Explanation.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/migrated/aging/about/pdfs/Undue_Influence_Explanation.authcheckdam.pdf)
- Triebel, K. L., Martin, D. R., Griffith, H. R., Marceaux, J., Okonkwo, O. C., & Marson, D. C. (2009). Declining financial capacity in mild cognitive impairment: A 1-year longitudinal study. *Neurology*, 73, 928–934. doi:10.1212/WNL.0b013e3181b87971
- Wood, S., & Liu, P. (2012). Undue influence and financial capacity: A clinical perspective. *Generations*, 36(2), 53–58.

## Appendix A: Protocol for focus group interviews

Thank you for joining us today. As your manager may have explained, we are studying the perspectives of Adult Protective Services (APS) personnel to learn more about their knowledge, practices, and responses to occurrences of undue influence. The study goal is to develop an APS screening tool focused on detecting undue influence. We think a screening tool could possibly make it easier to identify undue influence and help with risk assessments. Today we will be talking with you about undue influence to learn more about how you experience it in your work. We will also ask you about how you respond to these issues and suspicions. You may be aware there is a new California law defining undue influence and we'll talk about that too. For this study, we will conduct a total of four focus groups: two here in San Francisco and two in San Bernardino County. We are recording your comments today so that we will have an accurate record of what you said rather than relying on our memory alone. Following these focus group conversations our goal is to develop a first draft for a screening tool on undue influence. We have arranged to have experts in the field look over our work to provide input and advice. We are then asking APS practitioners such as yourselves to try the screening form in the field with two or three cases from their own caseloads, while (of course) keeping any client information confidential. Reflections on how the tool works will provide input for us to develop the final version of the screening tool, which we will make available to APS practitioners in California. Our meeting will last no more than 2 hours. In that time, we have seven questions to ask and look forward to having a good discussion. Before we begin, we'd like you to look over the study's informed consent form, please ask any questions you may have, and then please sign it and turn it in to one of us before we get started.

Focus Group Questions:

- (1) Professionals and laypeople tend to have different ways of understanding what undue influence means. Please tell us, from your perspective what undue influence is.

Probes, if not covered:

- Is this a topic you have had training on?
- Does a definition come to mind?
- Have you heard about the new legal definition (2014)?

- (2) When investigating the possibility of undue influence, what makes you think it is happening or could happen?

Probes, if not covered:

- Are there common situations where you see it?
- Do you see victims respond in a certain way?
- Any special questions used to detect undue influence?

- (3) Have you found any cultural differences or patterns in cases of undue influence?

Probes, if not covered:

- Are there socioeconomic differences?
- Are there patterns according to race/ethnicity?
- Things you may do differently?

(4) What actions can you take if you suspect undue influence is happening or could happen?

Probes, if not covered:

- Any special information you collect?
- Any historical information you check?
- What referrals might you make?
- Is conservatorship considered?
- Consultations with your supervisor?

(5) What types of administrative support do you find helpful or do you need with cases that may involve undue influence?

Probes, if not covered:

- Supervision and training provided?
- Protocols or procedures?
- Input from specialists?

(6) Do you have suggestions on how APS personnel can best detect and respond to cases involving undue influence?

Probes, if not covered:

- Consider criteria for the screening tool?
- Tips for detection?
- Trainings or services needed?

(7) Are there any other thoughts or input you might have for us?

## **Appendix B: Questions for experts on the draft version of the California Undue Influence Screening Tool**

- (1) What is your overall impression of the draft screening tool?
- (2) Does the draft screening tool cover the basics of undue influence?
- (3) Is there anything you feel is missing in the tool?
- (4) Is the screening tool clear? Is it correct?
- (5) The screening tool is designed for Adult Protective Services practitioners. In your opinion, would this screening of undue influence be helpful to other professions such as public guardian, court investigators, physicians, or attorneys? If so, how?
- (6) Should elements of the tool be added to the Capacity Declaration? If so, which ones?
- (7) Based on your work with APS, have you noticed misconceptions about undue influence, gaps in information collected or reported, etc.? Do you think the tool provides greater clarity and direction in those areas?
- (8) What are the circumstances in which APS personnel may be asked to weigh in on undue influence (e.g., making referrals to public guardians, legal assistance programs, private attorneys, or police; requesting restraining orders; referring to licensing boards or ethics committees of professional organizations)?

# Appendix C: California Undue Influence Screening Tool with instructions

## California Undue Influence Screening Tool (CUIST)<sup>1</sup>

Client's Name: \_\_\_\_\_

Date: \_\_\_\_\_

The purpose of CUIST is to aid Adult Protective Service personnel screen for suspected undue influence. Undue influence means excessive persuasion that causes another person to act or refrain from acting by overcoming that person's free will and results in inequity.<sup>2</sup> CUIST is divided four categories: Client Vulnerability, Influencer's Authority/Power, Actions/Tactics, and Unfair/Improper Outcomes. Check all the factors that apply to the victim's circumstances and provide examples. For more details and examples, see *Instructions for Completing California Undue Influence Screening Tool (CUIST)*.

Client's Vulnerability	Examples/ Comments
<input type="checkbox"/> Poor or declining health or physical disability <input type="checkbox"/> Depends on others for help or care <input type="checkbox"/> Problems with hearing, vision, or speaking <input type="checkbox"/> Problems with memory <input type="checkbox"/> Problems communicating and understanding <input type="checkbox"/> Does not understand consequences of decisions <input type="checkbox"/> Developmental disability <input type="checkbox"/> Dependent or passive behavior <input type="checkbox"/> Emotional distress (e.g., grief, anxiety, fear, depression) <input type="checkbox"/> Language/literacy barriers <input type="checkbox"/> Isolated from others <input type="checkbox"/> Lives in chaotic or dysfunctional environment <input type="checkbox"/> Other (please specify) _____ <input type="checkbox"/> No apparent vulnerability <input type="checkbox"/> Influencer knew or should have known of person's vulnerability	

<sup>1</sup> CUIST was developed under a grant by the Borchard Foundation Center on Law and Aging

<sup>2</sup> Probate Code §86 and Welfare and Institutions Code §15610.70

Influencer Authority/Position of Power	Examples/ Comments
<input type="checkbox"/> Stands in a position of trust, authority, or confidence resulting from: <ul style="list-style-type: none"> <li><input type="checkbox"/> Intimate/family relationship</li> <li><input type="checkbox"/> Caregiver</li> <li><input type="checkbox"/> Professional standing (e.g., legal professional, spiritual adviser, health care professional, real estate agent, banker, accountant)</li> <li><input type="checkbox"/> Legal authority (e.g., power of attorney, conservatorship, trust, representative payee)</li> <li><input type="checkbox"/> Controls elder's finances</li> <li><input type="checkbox"/> Immigration sponsor</li> <li><input type="checkbox"/> Landlord or long term care facility operator</li> <li><input type="checkbox"/> Predatory salesperson (e.g., telemarketer, annuity company, lottery)</li> </ul> <input type="checkbox"/> Has access to: <ul style="list-style-type: none"> <li><input type="checkbox"/> Client's home/possessions, finances, documents, private information (e.g., legal/immigration status, sexual orientation/identity), documents</li> </ul> <input type="checkbox"/> Other (please specify) _____ <input type="checkbox"/> No apparent authority, power, or access to assets and information	

Actions or Tactics	Examples/ Comments
<input type="checkbox"/> Manipulates or controls the client's access to food, sleep, medication or personal care <input type="checkbox"/> Makes promises to help the client get rich <input type="checkbox"/> Makes false claims or promises, or misrepresents self (e.g. claims to be an expert) <input type="checkbox"/> Professionals or paid caregivers involve clients in their personal lives or ask for gifts/loans <input type="checkbox"/> Controls access to information <input type="checkbox"/> Isolates from visitors, telephone/computer, or mail <input type="checkbox"/> Instills distrust and fear (e.g., nursing home placement, abandonment, threats of violence, "poisons relationships") <input type="checkbox"/> Moves into client's residence or changes their residence <input type="checkbox"/> Changes clients's usual providers (e.g. physicians, lawyers, bankers, accountants) <input type="checkbox"/> Makes frequent/repeated requests that benefit the influencer <input type="checkbox"/> Pressures during periods of distress, illness, transition <input type="checkbox"/> Uses affection, sex, intimidation or coercion <input type="checkbox"/> Rushes client to make decisions secretly and at inappropriate times and places <input type="checkbox"/> Solicits or encourages gifts, loans, bequests, or cash <input type="checkbox"/> Other (Please specify) _____ <input type="checkbox"/> No apparent use of actions or tactics described above.	

Unfair or Improper Outcome(s)	Examples/ Comments
<input type="checkbox"/> Economic losses (e.g. money, property, investments) <input type="checkbox"/> Changes in prior intent, conduct, or practices (e.g., new beneficiaries on wills; new signatories on bank accounts, changes in property ownership, changes to estate plans or charitable contributions) <input type="checkbox"/> Excessive gifts, payments, or donations in light of length and nature of relationship <input type="checkbox"/> Loss of home or resident, or eviction <input type="checkbox"/> Deterioration of home and environment <input type="checkbox"/> Loss of control of credit cards, bank accounts, or property <input type="checkbox"/> Identity theft <input type="checkbox"/> Unexplained physical decline or injury including weight loss, physical function <input type="checkbox"/> Negative mental or emotional changes including depression, loss of will to live, suicidal thoughts <input type="checkbox"/> Violation of rights (e.g., to live where one wants, to marry or divorce, agree to or refuse treatment) <input type="checkbox"/> Other (please specify) _____ <input type="checkbox"/> No apparent unfair or improper outcomes	

Summary
<p>Check the following boxes that you believe apply to this client :</p> <input type="checkbox"/> Victim appears to be vulnerable <input type="checkbox"/> Suspected influencer appears to have power or authority over the client. <input type="checkbox"/> Suspected influencer has taken steps suggestive of undue influence. <input type="checkbox"/> Influencer's actions appear to have resulted in unfair, improper, or suspicious outcome.
<p>Further steps may include but are not limited to: referral for conservatorship, neuropsychological evaluation, multidisciplinary team review, capacity assessment, or medical evaluation; interviews with friends, family, neighbors or professionals; maintaining CUIST in client's file for future reference; contacting law enforcement to discuss case; requesting financial institutions to provide information or monitoring, etc.*</p> <p>Comments or additional information:</p>

\* Specific actions will depend on supervisor input and agency policy.



**Instructions for Completing California Undue Influence Screening Tool (CUIST)<sup>1</sup>**

1. Complete the client's name and date.
2. Check all the factors that apply to the victim's circumstances.
3. Write in examples or comments that explain why you checked a box (see below for examples).
4. Complete the summary at the end of CUIST by checking the box(s) you believe apply to this client.
5. Specific actions taken after completing CUIST will depend on agency policy and in consultation with supervisors.

Client Vulnerability	Examples/Evidence
<input checked="" type="checkbox"/> Problems with memory	When I asked Mrs. H what bank she uses and how much money she has, she said she didn't know. Mr. S does not remember marrying his caregiver.
<input checked="" type="checkbox"/> Does not understand consequences of decisions	Mrs. G pays her caregiver \$2,000/mo. and her monthly income is \$1,800. When I told her that her savings will run out in two years, she told me I must be wrong.
<input checked="" type="checkbox"/> Dependent or passive behavior	Mrs. X insists that her niece answers questions for her.
Influencer Authority/Position of Power	
<input checked="" type="checkbox"/> Controls elder's finances	Mrs. E's granddaughter is her representative payee and also has the pin number to her bank accounts.
<input checked="" type="checkbox"/> Has access to client's home/possessions, finances, documents, or private information	Mr. T's neighbor knows that Mr. T is gay, and Mr. T is afraid that the neighbor will tell Mr. T's family.
Actions or Tactics	
<input checked="" type="checkbox"/> Professionals or paid caregivers involve client in their personal lives or ask for gifts/loans.	Mrs. C's caregiver brings her children to work and asked Mrs. C for a loan to pay for her daughter's piano lessons.
<input checked="" type="checkbox"/> Rushes client to make decisions secretly and at inappropriate times and places.	Mr. D's son pressured him to make him executor of his estate while he was in the hospital shortly after a stroke.
Unfair or Improper Outcome(s)	
<input checked="" type="checkbox"/> Changes in prior intent, conduct, or practices	Mr. G's niece was beneficiary in his will for 20 years. Now, his caregiver of two months is his new beneficiary.
<input checked="" type="checkbox"/> Violation of rights	Mrs. A gave her best friend power of attorney (POA) for finances. Her nephew held the power in the past and knows about the change, but uses the old POA anyway.
<input checked="" type="checkbox"/> Excessive gifts, payments, or donations in light of length/nature of relationship	Mr. R. signed over his home to his attendant of 6 months
<input checked="" type="checkbox"/> Deterioration of home or environment	Ms. L's utilities have been cut off.

<sup>1</sup> CUIST was developed under a grant by the Borchard Foundation Center on Law and Aging.