

Developing a Statewide Elder Abuse Prosecution Manual – New Resource, Renewed Mindset

North Carolina Conference of District
Attorneys

Introductions

Kimberly Overton Spahos

Chief Resource Prosecutor

North Carolina Conference of District Attorneys

Jordan Ford

Financial Crimes Prosecutor

North Carolina Conference of District Attorneys

Nancy Warren

Project Director

North Carolina Elder Abuse Prosecution Manual

Who Are You?

APS Professional

Law Enforcement

Prosecutors

Other Judicial Partner

Research and Academic

Medical Professional

Other Allied Professional

OBJECTIVES

1

Identify means to improve prosecution of elder abuse crimes.

2

Apply useful skills to initiate improved prosecution of elder abuse crimes in their community.

3

Understand the value of a multi-disciplinary approach to improved prosecution.

North Carolina Conference of District Attorneys

**State Agency
est. 1983**

- **Prosecutor Coordinator's Office**
- **43 Elected District Attorneys**
- **Over 1500 Assistant District Attorneys, Legal Assistants, Victim Service Coordinators, Investigators and other Allied Professionals.**
- **Staff in Raleigh & Regionally**

District Attorney Responsibilities

GS 7A - 61



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Conference of
District Attorneys

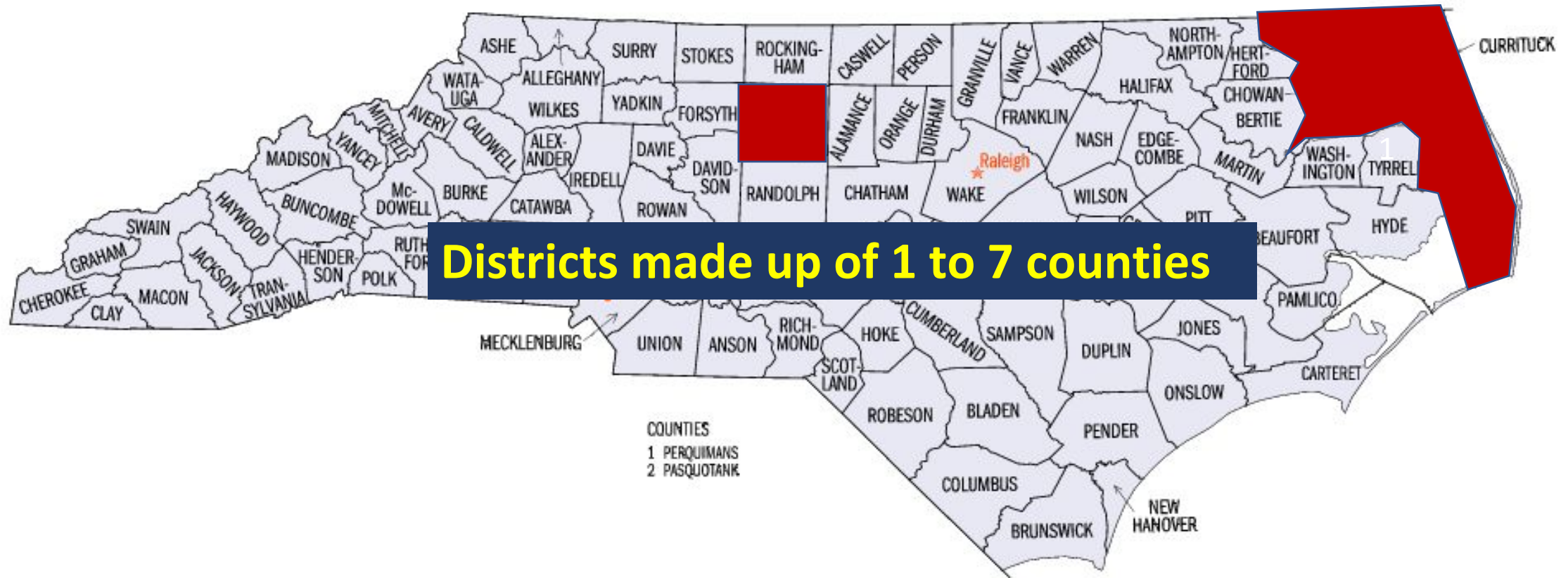
Mission

**To serve the office of
District Attorney in
their pursuit of justice
and improvement of
the administration of
criminal law for the
benefit of the people of
North Carolina.**

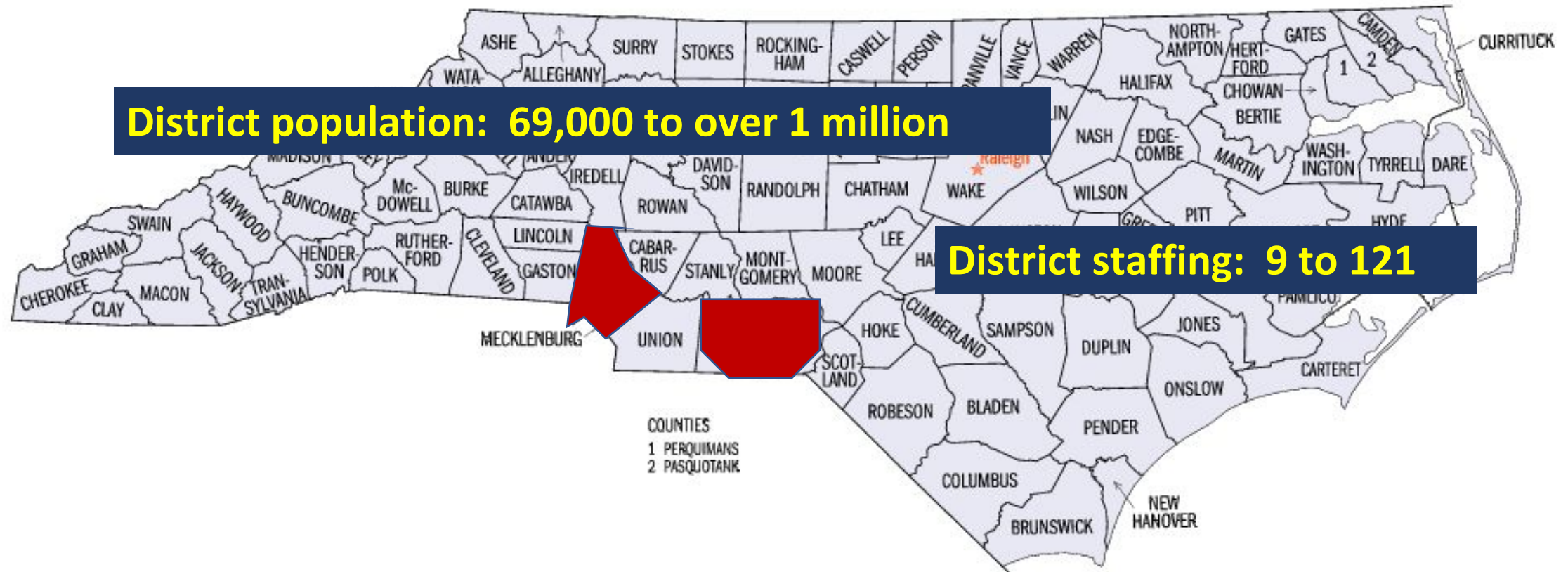
North Carolina Conference of District Attorneys

- Training
- Technical Assistance
- Manuals and Other Publications
- Special Prosecution
- Monitors Legislature
 - Criminal Law and Procedures

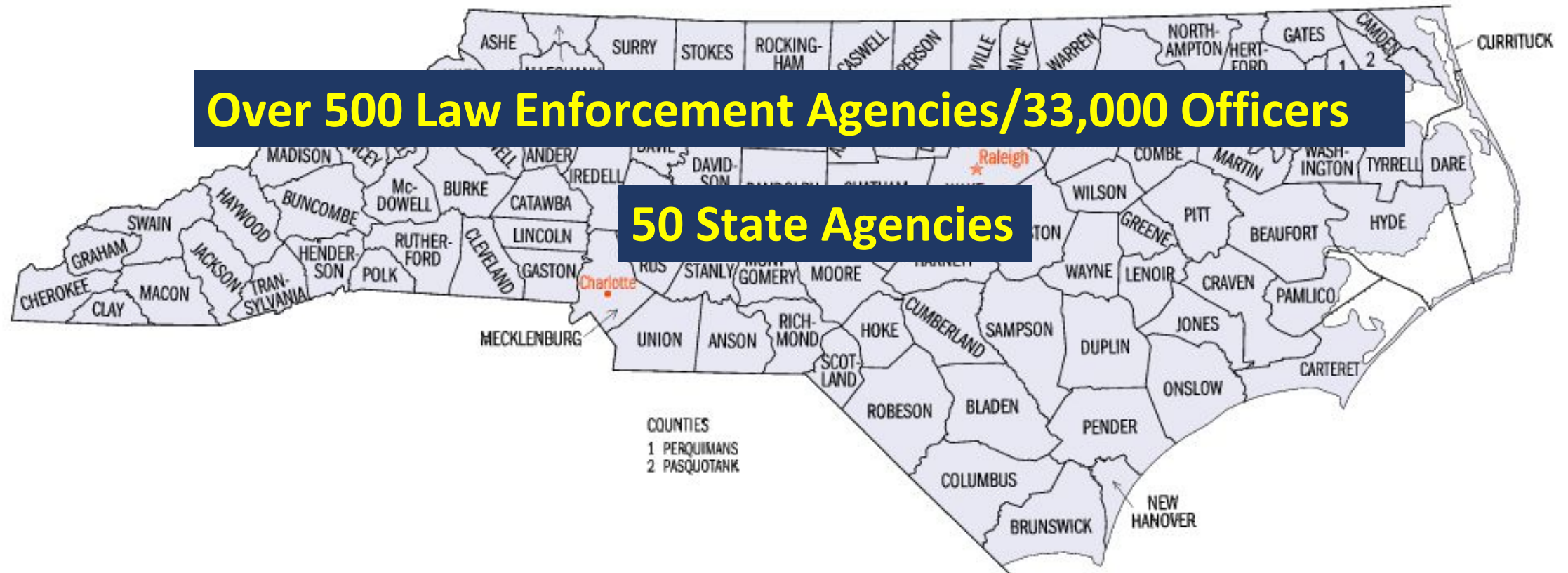
Challenges: Differences



Challenges: Differences



Challenges: Differences





**WHY THIS?
WHY NOW?**

Challenges: Turnover

**50% of prosecutors have less
than 5 years experience**

225% Increase Elder Abuse & Exploitation Requests

2018 Technical Assistance

**2019
Technical
Assistance**

**375% Increase
Elder Abuse &
Exploitation
Requests**



Special Prosecution - 2019
Financial Crime Unit

50% Victims Older
than 65

THE STATE

January 2020 • Volume V • Issue No. II

New Year's Resolutions to Stop Exploitation of Older Adults

Jordan Ford, Financial Crimes Resource Prosecutor, Conference of DAs

An African-American woman born on May 20, 1940, in rural southeastern North Carolina worked and saved all her life. She graduated from college during the height of the Civil Rights Movement after which she secured a job with the United States government in Washington, D.C. While she spent nothing on herself, she amassed a considerable amount of wealth by investing in real estate and assembling a sizeable amount of retirement assets. Many years later, when she began to experience a slight decline in her cognitive abilities, her family hired a well-known caretaker in the small North Carolina community where she was born and had now retired. After only six months with the caretaker, \$7.87 was all that remained of that lifetime of financial savings. Almost two years later, when the case of the caretaker was called for trial, the victim was unable to tell anyone what had happened.

This is a scenario that has become far too common in our line of work. In February of 2019, the Office of Financial Protection for Older Americans with the Consumer Financial Protection Bureau (CFPB) issued a report detailing various trends concerning the financial exploitation of older adults.¹ The first-of-its-kind analysis was based primarily on suspicious activity reports (SARs) filed

with the Financial Crimes Enforcement Network from 2013 to 2017. During those years, the number of SARs on record quadrupled to 63,500 in 2017 and involved more than \$6 billion of attempted and actual losses. The CFPB estimates that the number of filings it analyzed represent only a fraction of older adult exploitation nationwide. Among its many findings, the report concluded that when older adults were exploited by someone they knew, the financial losses were far greater. Additionally, if a fiduciary was responsible for the loss, the average amount of money involved was \$83,600 per victim. Perhaps the most alarming statistic was that fewer than one third of the reports prompted the financial institution involved to relay the activity to Adult Protective Services (APS), law enforcement, or other authorities.

The CFPB report sheds light on several issues that we already knew existed. Exploitation of older adults is on the rise and can no longer be ignored or pushed aside for other more "important" cases. Many of you have already started to notice an increase in the number of these cases coming across your desk. As prosecutors, we have a unique responsibility to do all we can to stop the exploitation of our aging population. Luckily, we do not have to take on this

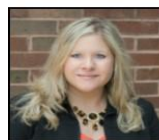
daunting task alone. We are fortunate to have many other allied professionals working alongside us toward the common goal of preventing exploitation. Justice for older adults who become victims of financial exploitation can most effectively be obtained through a collaborative approach between prosecutors, law enforcement, and APS professionals. As we continue to learn more about how to strengthen these partnerships in 2020, here is a suggested list of New Year's resolutions for prosecutors hoping to utilize APS and law enforcement more effectively in cases involving the exploitation of an older adult:

Get (and stay) organized. A prosecutor cannot begin to tell APS or law enforcement what he or she needs to create stronger exploitation cases unless that prosecutor knows every aspect of the law. Take some time to familiarize yourself with G.S. 14-112.2, the statute that criminalizes the financial exploitation of an older or disabled adult. There are also other specific crimes pertaining to older adults set forth in G.S. 14-32.3 that are important to know. Of course, do not forget that prosecution involving older adults may also fall under a number of more general crimes such as assault, false

Continued on page 32.

Justice Delivered: The Exploitation of Our Older Adults

Kimberly Spahos, Chief Resource Prosecutor, Conference of DA's



With a total population exceeding 10 million, North Carolina ranks 9th nationally, both in total population and in the number of people

65 and older. In 2019, we have more people older than 60 than under 19 and in 2025 one in five North Carolinians will be 65 or older. In the next two decades, the age group 75-84 will be the fastest growing population group in our state and the proportion of older adults age 85 and over will increase as the baby boomer population moves into this age group.¹ Therefore, in addition to being our fastest growing population group, these older adults are our fastest growing victim group. Understanding these statistics, and more importantly the people these statistics represent, is critical to ensuring **Justice is Delivered**.

Most older adult exploitation cases involve victimization by perpetrators with whom they have an ongoing and trusting relationship. These include intimate partners, adult children and grandchildren, other family members, trusted caregivers and fiduciaries. Some perpetrators abuse their real or apparent legal authority including power of attorney (POA), conservatorship and guardianship to obtain an older person's assets. Others use undue influence to obtain apparent consent for transactions or activities that benefit the perpetrator. Perpetrators frequently take advantage of the trust placed in them by the victim to continue their behavior and avoid responsibility. Because they so often trust and depend on the perpetrator, victims may be slow to recognize and report abuse and reluctant to cooperate

with criminal justice professionals. To overcome these challenges, prosecutors, law enforcement and community partners must work together.

Elder abuse is often a hidden crime exacting a horrific toll on its victims, resulting in diminished health, loss of independence and dignity, financial ruin, and premature death. As the gatekeeper to the criminal justice system, it is the responsibility of the prosecutor to ensure that the voices of older victims are heard and **Justice is Delivered**.

Some of the concepts that make exploitation cases unique include consent, competency and undue influence. Additionally, prosecutors must address whether the victim is able to testify and estimate life expectancy.

CONSENT is the free and voluntary agreement to engage in an act or transaction. It is given by one with sufficient mental capacity who understands the true nature of the agreement.

COMPETENCY is a judicial determination. Every person is presumed to be competent to testify in court. A person is disqualified to testify as a witness when the court determines that the person is incapable of expressing himself or herself concerning the matter to be understood, either directly or through interpretation by one who can understand him or her. A person is also disqualified to testify if they are incapable of understanding the duty of a witness to tell the truth.² Courts have found elderly witnesses to be competent, as long as they satisfied the criteria for competency under the rules of evidence. Even elderly witnesses who have intermittent difficulty

understanding the truth and testifying coherently have still been found competent.³

UNDUE INFLUENCE is the misuse of one's role and power to exploit the trust, dependence and fear of another to deceptively gain control over that person's decision making and/or assets. It may vitiate consent when it involves deceit or use, or threatened use, of force.

The issues that distinguish crimes against older adults from other crimes can impact how you communicate with older victims and assist them in participating as fully as possible in the prosecution of their case. Older victims are most likely to give you the information you need after you have given them what they need. Take time to find out what issues they are concerned with and try to address those as soon as possible. After addressing the victim's immediate concerns, develop rapport and trust before exploring case facts. Older victims may need more time to process information and respond to questions. Do not assume this is a symptom of dementia or memory loss. It is a normal fact of aging. Schedule the time, and give them the time, they need for conversations and interviews. Although prosecuting elder abuse cases is

2018 SCAMS AND LOSS IN NC

GRANDPARENT: -- \$214,800

GOVERNMENT: -- \$849,501

SWEEPSTAKES: -- \$4,290,540

SWEETHEART : -- \$5,906,109

**Verified loss to 255 victims in 2018*

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**New
Resource**

Renewed Mindset

Elder Abuse and Exploitation Prosecution Manual



Committee

Renewed Mindset

- Nancy Warren, Project Director
- Mary Hill, Master of ALL Things – Conference of DAs
- Prosecutors
 - Maria Caino, Charlotte
 - Janet Coleman, Wilmington
 - Jessica Spencer, Winston Salem
 - Lori Wickline, Greensboro
 - Chuck Spahos, Conference of DAs
 - Kimberly Spahos, Conference of DAs
- Aimee Wall, School of Government
- Angeleigh Dorsey, Legal Aid
- Jamie Hamlett, Alamance DSS
- Dave Kirkman, Retired Guru
- John Maron, Secretary of State
- Scott Sluder, Winston Salem PD
- Sarah Maness-Smith, Division of Aging & Adult Services



Tips, Tricks & Things We Learned

Elder Abuse and Exploitation Prosecution Manual

Renewed Mindset

In-depth Practical Prosecution Manual

Chapter I: Background and Overview

Chapter II: Investigation of Elder Abuse

Chapter III: Pre-Trial

Chapter IV: Trial

Appendix


Released in 2020 to ALL DA Offices



Chapter I: Background & Overview

- Key terms & background information intended to provide a snapshot of the scope and impact of the problem
- Description of how social services, guardianship and other civil remedies are involved with protecting elders
- Highlights the intersection between criminal prosecution and other options
- Summary of challenges facing prosecutors in elder abuse cases

Chapter II: Investigation of Elder Abuse

- **Evidence Collection Guides for Physical & Sexual Abuse, Caretaker Neglect & Financial Fraud & Exploitation**
 - **Interview Considerations**
 - **Assistance from other Agencies**
 - **Financial Privacy G.S. 53-B & HIPPA Concerns**
 - **Possible Criminal Statutes**
- 

Chapter III: Pre-Trial

- **Charging Decisions**
 - Laws Specific to Elder/Disabled Adults
 - Laws Not Specific to Elder/Disabled Adults
- **Competency & Capacity**
- **Furthering the Investigation**
- **Bail/Bond Considerations**
- **Plea Negotiations**
- **Pretrial Motions**
 - State & Defense
- **Witness Preparation**
- **Alternative Prosecution & Other Remedies**



Chapter IV: Trial

- Jury Selection
- Opening Statement
- Direct Examination
 - Expert Witnesses
 - Undue Influence
- Evidence-Based Prosecution
- Cross Examination & Common Defenses
- Sentencing

Appendix

- **Acronyms, Abbreviations & Terminology**
- **Resources**
- **State & Federal Agencies Involved with Elder Abuse**
- **Jury Instructions Relevant to Elder Abuse Prosecution**
- **Sample Orders & Motions**
- **Initiating, Planning & Developing an Investigation**
- **Secretary of State**
- **Financial Privacy Act**
- **Interview Questions for Older Victims**
- **Autopsy**
- **Forms & more**



Elder Abuse & Exploitation Law Enforcement PRIMER

Renewed Mindset

Quick Reference Guide for Patrol Officers

Physical and Sexual Abuse

Caretaker Neglect

Financial Fraud and Exploitation

Interview Considerations

Resources and Assisting Agencies

Released Early 2021 to ALL Sheriffs and Police



Contact Information

Kimberly Overton Spahos

Kimberly.n.overton@nccourts.org

Jordan Ford

Jordan.m.ford@nccourts.org

Nancy Warren

nancywarren229@gmail.com