

THE EMERGING ROLE OF
MAGISTRATES IN CRIMES
OCCURRING IN LONG TERM CARE

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*Strategic Alliances For Elders
in Long Term Care*

*A multidisciplinary taskforce
dedicated to protecting residents
from harm*

Established- June 11, 2003

S.A.F.E. IN LTC

Mission:

- To develop cooperative relationships between agencies that are charged with protecting individuals in long term care settings,
- Through the development and distribution of educational and training materials to professionals and the public
- Focused on recognizing and responding to crimes occurring in long term care facilities.



S.A.F.E. IN LTC

General Message:

Crimes that occur in the community can and do occur in long term care facilities.

Regardless of the setting all crimes need to be prosecuted to the full extent of the law.

This includes crimes such as physical assault, theft, financial exploitation, etc.



S.A.F.E. IN LTC

The Goal:

To educate and inform the public, providers and law enforcement agencies about:

- Recognizing the impact of crime on LTC residents
- Responding to crime when it occurs in a long term care setting, such as a nursing, adult or family care home.



The North Carolina Medicaid Investigations Unit

MISSION STATEMENT

The mission of the Medicaid Investigations Unit is to eliminate fraud in the North Carolina Medicaid program through the investigation and prosecution of criminal violations, the assessment of civil penalties, and the collection of damages pertaining to fraud in the administration of the Medicaid program and fraud by providers of medical assistance, and the investigation and criminal prosecution of the physical abuse of patients and the misappropriation of private funds of patients in Medicaid funded health care facilities by providers, and, as authorized by the Office of Inspector General, the investigation of Medicare and other federal healthy care cases which are primarily related to Medicaid fraud.



The North Carolina Medicaid Investigations Unit

- NC-MIU constituted in 1979 by way of Federal Legislation
- 50 units across the United States including the District of Columbia
- Oversight by HHS-OIG
- Partially Federally funded



Purpose Of MIU

- Combat Fraud and Abuse by Providers in the Medicaid program
- We do not investigate Recipient Fraud



Three Areas Of Subject Matter Jurisdiction

- Fraud or related offenses perpetrated by Medicaid Providers
- Patient Abuse and Neglect
- Misappropriation of Patient funds in Medicaid facilities



I'M A MAGISTRATE
WHY DO I CARE ABOUT LONG
TERM CARE ?

REASON 1

Section 6703(b)(3) of the Patient Protection and Affordable Care Act of 2010 requires long term care facilities to report **ANY REASONABLE SUSPICION OF CRIMES COMMITTED** against residents of their facilities.

Facilities can be fined up to \$300,000 for failing to report crimes.

REASON 2

The changing dynamics of long term care residents.

- younger adults are developing disabilities that cause them to enter facilities where they are co-located with older adults,
- which, increases the possibility of resident on resident violence and introducing mores and behaviors not previously seen in ltc

REASON 3

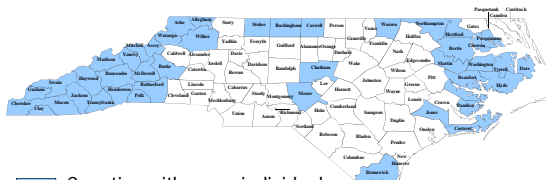
North Carolina's population is aging!

The Population of NC is Getting Older

- Older adults are North Carolina's fastest growing segment of the population.
- Reasons include: decreasing birth rates, improved life expectancies, and migration.
- The next slides illustrate statewide trends



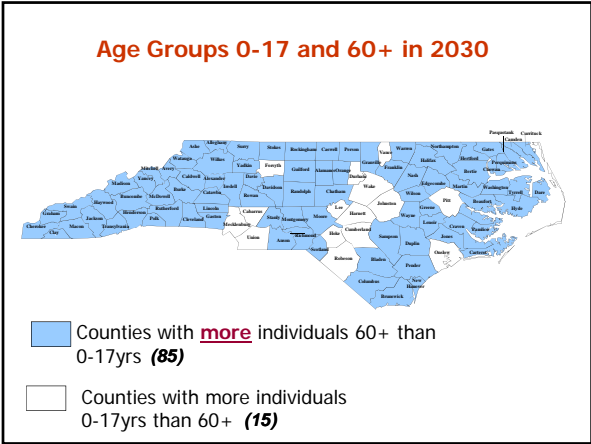
NC Residents Age 0-17 and 60+ in 2010

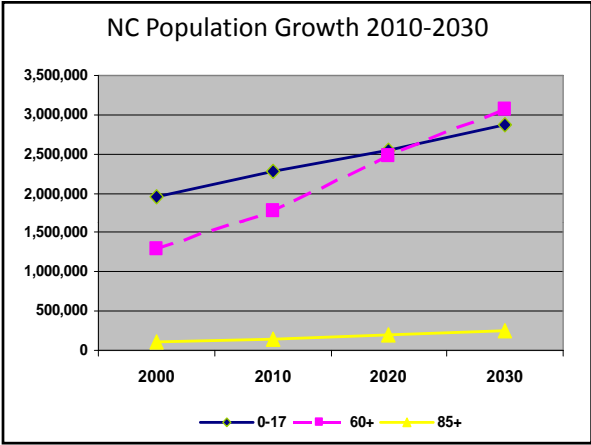


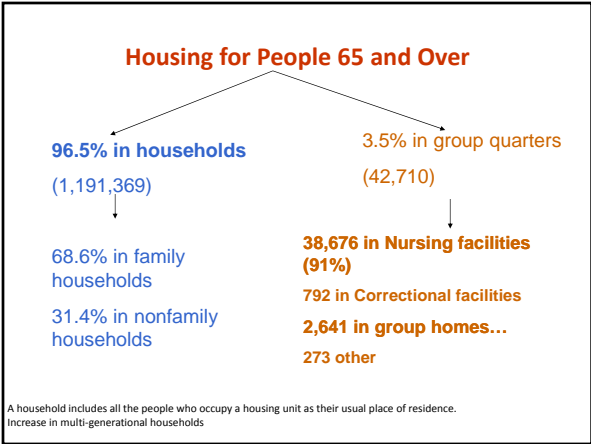
Counties with more individuals 60+ than 0-17yrs (43)

Counties with more individuals age 0-17yrs than 60+ (57)

Source: US Census 2010







Life Expectancy, 2010

Age Groups	NC
60-64	22.7
65-69	18.8
70-74	15.3
75-79	12
80-84	9.2
85+	6.8




OK YOU HAVE MY ATTENTION
BUT, WHAT IS LONG TERM CARE ?

LONG TERM CARE FACILITIES




COMMUNITY BASED HOUSING

- SENIOR APARTMENTS
- CONGREGATE HOUSING
- MULTI-UNIT HOUSING WITH SERVICES



+



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CONTINUING CARE RETIREMENT COMMUNITY



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CCRC CONTRACTS

- EXTENSIVE/LIFE CARE
- MODIFIED
- FEE FOR SERVICE
- EQUITY



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TYPES OF LONG TERM CARE FACILITIES

- FAMILY CARE HOMES
- ADULT CARE HOMES
(AKA ASSISTED LIVING)
- NURSING HOMES

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FAMILY CARE HOMES

- SERVE 2-6 UNRELATED INDIVIDUALS
- PROVIDE AT LEAST THREE MEALS A DAY
- HOUSEKEEPING SERVICES
- PROVIDE PERSONAL CARE SERVICES.



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ADULT CARE HOMES



- SERVE (7) OR MORE UNRELATED PERSONS
- MGMT PROVIDES 24HR SCHEDULED & UNSCHEDULED PERSONAL CARE SERVICES TO (2) OR MORE RESIDENTS AGE 18 OR OLDER
- RESIDENTS PRIMARY CARE NEEDS ARE CUSTODIAL IN NATURE VERSUS MEDICAL
- THIS TYPE OF FACILITY **DOES NOT** PROVIDE ONSITE MEDICAL CARE
- EACH RESIDENT HAS A PHYSICIAN WHO ADDRESSES THEIR PARTICULAR HEALTH CARE NEEDS

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SERVICES PROVIDED TO ACH RESIDENTS

- PERSONAL CARE
 - BATHING
 - DRESSING
 - TOILETING
 - GROOMING
- HEALTH CARE
 - ADMINISTRATION AND MANAGEMENT OF MEDICATIONS
 - ARRANGE MEDICAL/DENTAL APPOINTMENTS
 - TRANSPORTATION
- FOOD SERVICE
 - SERVED (3) NUTRITIONALLY BALANCED MEALS PER DAY & SNACKS
 - PREPARE SPECIALTY DIETS IF NECESSARY
 - SERVE FOODS THAT TAKE INTO ACCOUNT INDIVIDUAL PREFERENCES OF RESIDENTS
- ACTIVITIES
 - PROGRAMS THAT BRING PLEASURE & ENJOYMENT TO RESIDENTS
 - CUSTOMIZED ACTIVITIES REFLECTING RESIDENTS PERSONAL CHOICES
 - PROMOTE COMMUNITY INVOLVEMENT WITH RESIDENTS
- OTHER PERSONALIZED SERVICES
 - TRANSPORTATION TO ACTIVITIES OF THEIR CHOOSING
 - LAUNDRY SERVICE
 - LOCKABLE SPACE FOR PERSONAL BELONGINGS
 - ACCESS TO A PUBLIC PHONE ALLOWING FOR PRIVACY WHEN IN USE



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WHO ARE THESE RESIDENTS ?

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ADULT CARE HOME RESIDENTS

- ❖ **FRAIL OLDER ADULTS**
- ❖ **INDIVIDUALS WITH PHYSICAL DISABILITIES**
- ❖ **INDIVIDUALS WHO ARE DEVELOPMENTALLY CHALLENGED**
- ❖ **INDIVIDUALS WITH DIAGNOSES OF MENTAL ILLNESS**

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REASONS WHY INDIVIDUALS LIVE IN ACHs

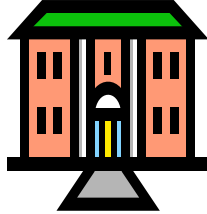
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- **MANY ADULTS DUE TO EITHER PHYSICAL OR MENTAL HEALTH CONCERNS NEED ADDITIONAL ASSISTANCE IN CARRYING OUT THEIR DAILY ROUTINES.**
- **EVEN THOUGH THESE INDIVIDUALS NEED 24 HR SUPERVISION- RESIDENTS STILL SHOULD BE GIVEN THE OPPORTUNITY TO MAINTAIN AND EXERCISE THEIR INDEPENDENCE AND AUTONOMY TO THE GREATEST EXTENT POSSIBLE.**

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NURSING HOMES

- FACILITIES WHICH PROVIDE NURSING OR CONVALESCENT CARE FOR (3) OR MORE UNRELATED INDIVIDUALS
- PROVIDE CARE FOR PERSONS WHO HAVE REMEDIAL AILMENTS OR OTHER AILMENTS FOR WHICH MEDICAL AND NURSING CARE ARE INDICATED
- THE INDIVIDUAL'S PRIMARY NEED IS MEDICAL SUPERVISION AND IS CARRIED OUT ONSITE BY LICENSED HEALTH CARE PROFESSIONALS UNDER THE DIRECTION OF THE RESIDENT'S PHYSICIAN



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SERVICES PROVIDED TO NH RESIDENTS

- PERSONAL CARE
 - BATHING
 - DRESSING
 - TOILETING
 - GROOMING
- HEALTH CARE
 - ADMINISTRATION AND MANAGEMENT OF MEDICATIONS
 - ARRANGE MEDICAL / DENTAL APPOINTMENTS
 - UTILIZATION OF AVAILABLE THERAPIES
 - EMERGENCY MEDICAL TRANSPORTATION
- FOOD SERVICE
 - SERVED (3) NUTRITIONALLY BALANCED MEALS PER DAY & SNACKS
 - PREPARE SPECIALTY DIETS IF NECESSARY
 - SERVE FOODS THAT TAKE INTO ACCOUNT INDIVIDUAL PREFERENCES OF RESIDENTS
- ACTIVITIES
 - PROGRAMS THAT BRING PLEASURE & ENJOYMENT TO RESIDENTS
 - CUSTOMIZED ACTIVITIES REFLECTING RESIDENTS PERSONAL CHOICES
 - PROMOTE COMMUNITY INVOLVEMENT WITH RESIDENTS
- OTHER PERSONALIZED SERVICES
 - LAUNDRY SERVICE
 - HOUSEKEEPING



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WHO ARE THESE RESIDENTS ?

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NURSING HOME RESIDENTS

- MEDICALLY FRAIL OLDER ADULTS
- ADULTS WHO NEED CONSISTENT MONITORING OF THEIR HEALTH STATUS REGARDLESS OF AGE
- PEOPLE WITH SIGNIFICANT PHYSICAL DISABILITIES OR HEAD TRAUMA INJURIES
- INDIVIDUALS WHO ARE RECOVERING FROM A MAJOR HEALTH CRISIS OR SURGERY

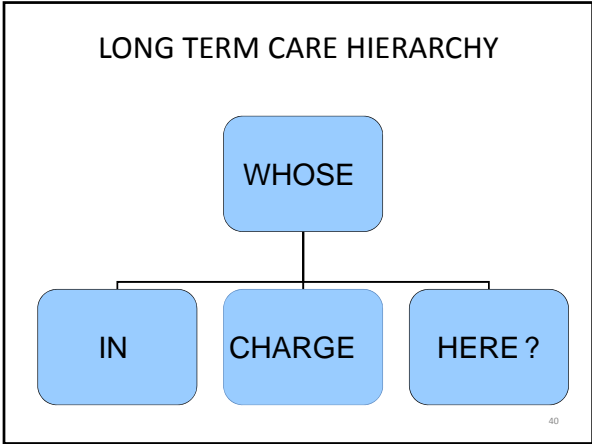
37

REASONS WHY INDIVIDUALS LIVE IN NHs

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- **MANY ADULTS DUE TO EITHER PHYSICAL OR MENTAL HEALTH CONCERNS NEED ADDITIONAL ASSISTANCE IN CARRYING OUT THEIR DAILY ROUTINES.**
- **EVEN THOUGH THEY NEED 24 HR MEDICAL ATTENTION RESIDENTS SHOULD STILL BE ABLE TO MAINTAIN AND EXERCISE THEIR INDEPENDENCE AND AUTONOMY TO THE GREATEST EXTENT POSSIBLE.**
- **RESIDENCY IN A NURSING HOME IS NOT ALWAYS A PERMANENT STATE. REGARDLESS OF THE AMOUNT OF TIME A PERSON SPENDS IN A NURSING HOME THEIR SAFETY AND WELL BEING SHOULD BE OF THE UTMOST CONCERN.**

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- LTC STAFF MEMBERS IN ACH**
(otherwise know as possible defendants)
- ADMINISTRATOR
 - CO-ADMINISTRATOR
 - SUPERVISOR IN-CHARGE
 - PERSONAL CARE ASSISTANT
 - MEDICATION AIDE
 - ACTIVITY DIRECTOR
 - FOOD SERVICE

- LTC STAFF MEMBERS IN NH**
(otherwise known as possible defendants)
- ADMINISTRATOR
 - MEDICAL DIRECTOR
 - ATTENDING PHYSICIAN
 - DIRECTOR OF NURSING
 - NURSES - RNS; LPN; CNA
 - SOCIAL WORKER/SERVICES DIR.
 - ALLIED HEALTH PROVIDERS
 - DIETARY SUPERVISOR
 - ACTIVITES COORDINATOR
 - MEDICAL RECORDS SUPRV.
 - BILLING OFFICER
 - MAINTENANCE/HOUSEKEEPING

**ENFORCEMENT AND
OVERSIGHT AGENCIES**
ADULT CARE HOMES
(GOVERNED BY STATE STATUTES AND LAWS)

ACH LICENSURE
&
CERTIFICATION SECTION

LICENSED BY-
NC DIVISION OF HEALTH SERVICE REGULATION
(919) 855-3765

MONITORED BY-
NC DEPARTMENT OF SOCIAL SERVICES
ADULT PROTECTIVE SERVICES
ADULT HOME SPECIALIST

**ENFORCEMENT AND
OVERSIGHT AGENCIES**
NURSING HOMES
(GOVERNED BY FEDERAL LAWS AND STATE STATUES)

NH LICENSURE
&
CERTIFICATION SECTION

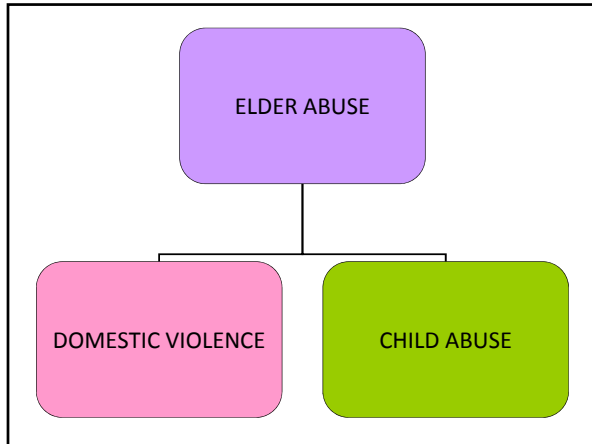
LICENSED BY –
NC DIVISION OF HEALTH SERVICE REGULATION
(919) 855-4520

MONITORED BY -
NC DIVISION OF HEALTH SERVICE REGULATION
FEDERALLY TRAINED SURVEYORS

SUPPORTING REGULATORY
ORGANIZATIONS

- NC Health Care Personnel Registry-(919) 855-3968
<http://www.ncnar.org>
- NC Board of Nursing- (919) 782-3211
<http://www.ncbon.com>
- NC Medical Board - (919) 326-1100
<http://www.ncmedboard.org>
- NC State Board of Examiners for Nursing Home Administrators -
(919) 571- 4164
<http://www.ncbenha.org>

OK, WHAT DO I NEED TO KNOW
ABOUT THE LAW ?




Second Degree Murder

N.C.G.S. 14-17

A person guilty of this offense

- (1) unlawfully distributes
- (2) **opium**, cocaine, or a **derivative of either substance**, and
- 3) the ingestion causes the users death.



Involuntary Manslaughter

N.C.G.S. § 14-18

A person is guilty if:

- a) they kill
- b) another living human being
- c) unlawfully by either:
 - (i) engaging in conduct in such a reckless or careless manner as to show a thoughtless disregard for consequences or a headless indifference to the rights and safety of others, or
 - (ii) *by culpable omission to perform a legal duty.*

A Class F felony.

Patient Abuse and Neglect (Death)

N.C.G.S. § 14-32.2 - A Person guilty of this offense:

- (a) Physically abuses a patient of a health care facility or a resident of a residential care facility (a)
- (b) The abuse results in death (a)
- (c) If the abuse is intentional it is a **Class C felony** (b)(1)
- (d) *If the culpably negligent conduct of the defendant results in death it is a **Class E felony** (b)(2).*



Patient Abuse and Neglect (Death) [con't]

Definitions:

Health Care Facility: hospitals, skilled nursing facilities, psychiatric facilities.

Residential Care Facility: adult care homes

Culpably Negligent: conduct of a willful, gross and flagrant character, evincing reckless disregard of human life.

Abuse: willful or culpably negligent infliction of physical injury or the willful or culpably negligent violation of any law designed for the health or welfare of a patient or resident.



Patient Abuse and Neglect (Bodily Injury)

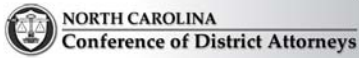
N.C.G.S. § 14-32.2 – a person guilty of this offense:

- (a) physically abuses a patient of a health care facility or a resident of a residential care facility (a)
- (b) the abuse results in bodily injury (a)
- (c) if the conduct is willful or culpably negligent and proximately causes serious bodily injury it is a **Class F felony**
- (d) if the conduct is part of a pattern of conduct and is willful or culpably negligent and proximately causes bodily injury it is a **Class H felony**.



Patient Abuse and Neglect (Death) [con't]

**CRIMINAL PROCESS FOR VIOLATION OF THIS
STAUTE MAY ONLY BE ISSUED AT THE
REQUEST OF THE DISTRICT ATTORNEY**



Decubitus Ulcers

- Areas of necrosis and ulceration that usually develop where tissue is compressed between bony prominences and hard surfaces.

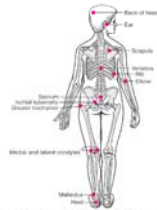
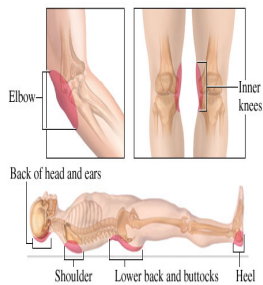


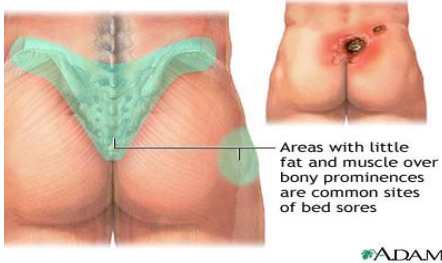
FIGURE 138-1. Common sites of pressure ulcers. The most common sites are the occipital, ear, the shoulder, the hip, sacrospinous, medial and lateral femoral condyles, heels, and toes. Other sites include the elbows, scapula, trochanter, ribs, ears, and back of the head.

Location

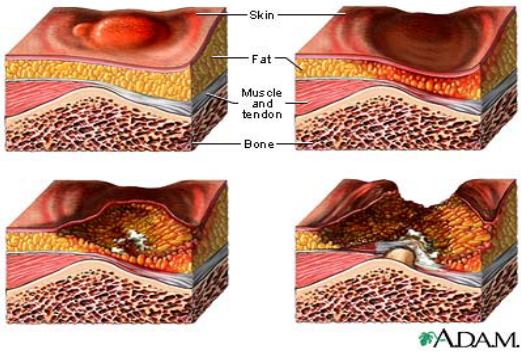


- Sacrum 31%
- Buttocks 27%
- Heels 20%
- Trochanters(thighs) 10%
- Lower limbs 5%
- Trunk 4%
- Upper limbs 3%

Sacral and Trochanter

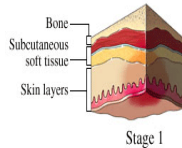


Progression of decubitus ulcer

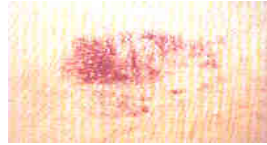
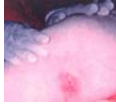


Stage 1 Description

- NON-blanchable area of **redness**
- Intact skin
- Any observable change in the skin
 - Temperature
 - Consistency
 - Sensation

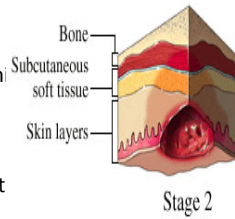


Stage 1 Pictures



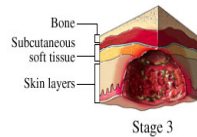
Stage 2 Description

- Shallow, superficial crater
- Involves the epidermis and/or the dermis.
- May also present as an abrasion, blister
- NO Subcutaneous fat observed



Stage 3 Description

- Involves subcutaneous fat
- Does NOT go through underlying fascia
- DEEP crater
- Subcutaneous fat observed but NO muscle seen

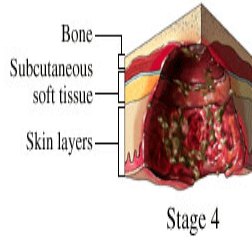


Stage 3: Picture



Stage 4 Description

- Extensive damage to the muscle, bone, or tendon
- Undermining and sinus tracts may also be associated



Stage 4: Pictures



Simple Assault on a Handicapped Person

- N.C.G.S. § 14-32.1 – a person guilty of this offense:
- a) commits an assault (any unwanted touching)
 - b) on a handicapped person.

Handicapped person – a person who has a physical or mental disability, such as decreased use of arms or legs, blindness, deafness, mental retardation or mental illness or infirmity **and** that disability would substantially impair that person's ability to defend him or herself.



A Class A1 misdemeanor.

Aggravated Assault on a Handicapped Person

- N.C.G.S. § 14-32.1 – a person guilty of this offense:
- a) commits an assault.
 - b) on a handicapped person, and
 - c) (i) uses a deadly weapon or other means of force likely to cause serious injury to a handicapped person, or
 - (ii) inflicts serious injury on a handicapped person, or
 - (iii) intends to kill a handicapped person.

A Class F felony.

Medicaid Fraud by Provider 108A-63

- 1) Makes a false statement in an application for payment.
- 2) Makes a false statement for use in determining entitlement to a payment.
- 3) Makes a false representation of a material fact with respect to the conditions and operations of the defendant's facility in order to qualify or remain qualified to provide medical assistance.
- 4) Fail to disclose a fact affecting the defendant's initial or continued entitlement to payment.
- 5) Conceal a fact affecting the amount of payment to which the defendant was entitled.



Failure to Support Parents 14-326.1

Any person:

- 1) Over 18
- 2) With sufficient means
- 3) Neglects and fails to care for their parent when the parent is unable to care for his or herself.

Siblings are equally responsible.

Class 2 Misdemeanor for the 1st offense.
Class 1 for subsequent occurrences.



Second Degree Rape

N.C.G.S. § 14-27.3 – a person is guilty of this offense if that person:

- (a) has vaginal intercourse,
- (b) with a person
- (c) and the intercourse is with someone who is
 - (i) mentally defective; or
 - (ii) mentally incapacitated; or
 - (iii) physically helpless, which is or should be known to the defendant.

A Class C Felony.

Second-Degree Sexual Offense

N.C.G.S. § 14-27.5 – a person guilty of this offense

- (a) engages in a sexual act other than intercourse,
- (b) with a person
- (c) and the sexual act is with someone who is
 - (i) mentally defective; or
 - (ii) mentally incapacitated; or
 - (iii) physically helpless, which is or should be known to the defendant.

A Class C Felony.

Sexual Battery

- N.C.G.S. § 14-27.5A . A person guilty of Sexual Battery when:
- 1) For the purpose of sexual arousal, sexual gratification, or sexual abuse;
 - 2) Engages in sexual contact with another person either:
 - a) By force or against that persons will; or
 - b) Who is mentally disabled, incapacitated, or physically helpless and the person performing the act knows or should know the person is physically helpless.

A Class A1 Misdemeanor.

Custodial Sexual Assault

- N.C.G.S. § 14-27.7 – a person guilty of this offense:
- (a) has custody of the victim or is an agent or employee of a person or institution having custody of the victim, and
 - (b) has vaginal intercourse or engages in a sexual act
 - (c) with a person who is in custody

CONSENT IS NOT A DEFENSE TO THIS CHARGE !!!

A Class E Felony



Mental Health Facility

- N.C.G.S. § 122C-65(a)(5) – a person guilty of this offense:
- (a) is an individual who is not a developmentally disabled client of a facility and
 - (b) engages in, or offers to engage in an act with a client of a facility that would constitute a sex offense.

A Class 1 Misdemeanor.

Kidnapping

N.C.G.S.14-39 a person guilty of this offense:

- (1) confines or restrains or removes from one place to another
- (2) a person
- (3) without the person's consent
- (4) for the purpose of
 - (i) facilitating the commission of a felony
 - (ii) doing serious bodily harm to the victim
 - (iii) terrorizing the victim.

Class C or E depending on other conduct.

Protection of Patient Property

N.C.G.S. § 108A-60:

Commingling : a person guilty of this offense if they commingle the personal funds of a resident of a health care facility with the funds of the facility. (Class 1 misdemeanor)

Embezzlement: a person guilty of this offense unlawfully takes the personal funds or property of the resident of a health care facility. **(Class H Felony)**

Financial Exploitation by Caretakers

- Exploitation of Elder Adult (N.C.G.S. §14-112.2)
 - A person who is in a position of trust or has a business relationship with an elder adult who obtains an asset of the elder adult by either deceit or intimidation or when the elder adult is unable to give consent.
 - Elder adult is 60 years or older and cannot care for themselves.
- For offenses committed after December 1, 2005.

Undue Influence

is the substitution of one person's will for the true desires of another. Unlike common persuasion and sales techniques, fraud, duress, threats or other deceptions are often features of undue influence. Undue influence takes place when one person uses his or her role and power to exploit the trust, dependency, and fear of another. The power is used to gain psychological control over the decision-making of a weaker person.

"The measure of a society is found in how they treat their weakest and most helpless citizens."

President Jimmy Carter



ADDITIONAL INFORMATION

Visit us at the
North Carolina Justice Academy
www.ncdoj.gov
(910) 525-4158
*VOICELESS VICTIMS:
INVESTIGATING CRIMES IN LONG TERM CARE*
and
North Carolina Division of Aging and Adult Services
Ombudsman Program
<http://www.ncdhhs.gov/aging/>
(919) 855-3429
