

Crimes That May Be Implicated in Elder Abuse Cases

The table below identifies some of the crimes that may be charged in cases involving elder abuse. It is a more detailed version of Table 3.3 in Chapter 3.

CRIMES SPECIFIC TO ELDER AND DISABLED ADULTS

CRIME	STATUTE (G.S.)	ELEMENTS
Assault on Handicapped Person	14-32.1	(1) The defendant commits an assault or battery (2) on a handicapped person (3) knowing or having reason to know that the person is handicapped • No age requirement for victim • “Handicapped person” has definition specific to this crime
Aggravated Assault on a Handicapped Person	14-32.1(e)	(1) The defendant commits an assault or battery (2) on a handicapped person (3) knowing or having reason to know that the person is handicapped and (4) (a) uses a deadly weapon or other means of force likely to cause serious injury or serious damage to a handicapped person, (b) inflicts serious injury on a handicapped person, or (c) intends to kill a handicapped person
Patient Abuse and Neglect There are four levels of conduct, resulting in different felony classifications depending on the nature of the conduct and the harm to the victim: (1) Willful or Culpably Negligent Pattern of Conduct Causing Bodily Injury (2) Willful or Culpably Negligent Conduct Causing Serious Bodily Injury (3) Culpably Negligent Conduct Causing Death (4) Intentional Conduct Causing Death	14-32.2	(1) The defendant physically abuses (2) (a) a patient of a health care facility or (b) a resident of a residential care facility and Lowest level of offense: (3) the abuse evinces a pattern of conduct (4) that is (a) willful or (b) culpably negligent and (5) proximately causes (6) bodily injury to a patient or resident Next-higher levels of offense: (3) the abuse is (a) willful or (b) culpably negligent and (4) proximately causes (5) serious bodily injury/death to a patient or resident Highest level of offense: (3) the abuse constitutes intentional conduct (4) that proximately causes (5) the death of the patient or resident • No age requirement for victim

CRIMES SPECIFIC TO ELDER AND DISABLED ADULTS, cont'd

CRIME	STATUTE (G.S.)	ELEMENTS
Abuse of a Disabled or Elder Adult	14-32.3	<ol style="list-style-type: none"> (1) The defendant is a caretaker of (2) <ol style="list-style-type: none"> (a) a disabled adult or (b) an elder adult (3) who is residing in a domestic setting and (4) with malice, knowingly and willfully (5) <ol style="list-style-type: none"> (a) assaults the adult, (b) fails to provide medical care or hygienic care to the adult, or (c) confines or restrains the adult in a place or under a condition that is cruel or unsafe and (6) as a result the adult suffers mental or physical injury <ul style="list-style-type: none"> • If the mental or physical injury is serious, the crime is elevated from a Class H to a Class F felony
Neglect of a Disabled or Elder Adult	14-32.3(b)	<ol style="list-style-type: none"> (1) The defendant is a caretaker of (2) <ol style="list-style-type: none"> (a) a disabled adult or (b) an elder adult (3) who is residing in a domestic setting and (4) wantonly, recklessly, or with gross carelessness (5) <ol style="list-style-type: none"> (a) fails to provide medical or hygienic care to the adult or (b) confines or restrains the adult in a place or under a condition that is unsafe and (6) as a result, the adult suffers mental or physical injury <ul style="list-style-type: none"> • If the mental or physical injury is serious, the crime is elevated from a Class I to a Class G felony
Exploitation of a Disabled or Elder Adult through a Position of Trust or Business Relationship	14-112.2(b)	<ol style="list-style-type: none"> (1) The defendant <ol style="list-style-type: none"> (a) stands in a position of trust and confidence or (b) has a business relationship (2) with an elder or disabled adult and (3) knowingly (4) by deception or intimidation (5) obtains, uses, or endeavors to obtain or use an elder or disabled adult's funds, assets, or property (6) with the intent to <ol style="list-style-type: none"> (a) deprive temporarily or permanently the elder or disabled adult of the use, benefit, or possession of the funds, assets, or property or (b) benefit someone other than the elder or disabled adult
Exploitation of a Disabled or Elder Adult Lacking Capacity	14-112.2(c)	<ol style="list-style-type: none"> (1) The defendant knows or reasonably should know that (2) an elder or disabled adult lacks the capacity to consent and (3) obtains, uses, endeavors to obtain or use, or conspires with another to obtain or use an elder or disabled adult's funds, assets, or property (4) with the intent to <ol style="list-style-type: none"> (a) deprive temporarily or permanently the elder or disabled adult of the use, benefit, or possession of the funds, assets, or property or (b) benefit someone other than the elder or disabled adult

RAPE AND OTHER SEX OFFENSES

CRIME	STATUTE (G.S.)	ELEMENTS
First-Degree Forcible Rape	14-27.21	<ol style="list-style-type: none"> (1) The defendant has vaginal intercourse (2) with a person (3) by force and (4) against that person's will and (5) the defendant <ol style="list-style-type: none"> (a) uses, threatens to use, or displays a dangerous or deadly weapon (or what reasonably appears to be a dangerous or deadly weapon), (b) inflicts serious personal injury on the victim, (c) inflicts serious personal injury on another person, or (d) is aided and abetted by one or more other persons
Second-Degree Forcible Rape	14-27.22	<ol style="list-style-type: none"> (1) The defendant has vaginal intercourse (2) with a person (3) and the intercourse is <ol style="list-style-type: none"> (a) by force and against the person's will or (b) with someone who is <ol style="list-style-type: none"> (i) mentally disabled, (ii) mentally incapacitated, or (iii) physically helpless and (4) the defendant knew or should have known that the victim was mentally disabled, mentally incapacitated, or physically helpless
First-Degree Forcible Sexual Offense	14-27.26	<ol style="list-style-type: none"> (1) The defendant engages in a sexual act other than vaginal intercourse (2) with a person (3) by force and (4) against that person's will and (5) the defendant <ol style="list-style-type: none"> (a) uses, threatens to use, or displays a dangerous or deadly weapon (or what reasonably appears to be a dangerous or deadly weapon), (b) inflicts serious personal injury on the victim, (c) inflicts serious personal injury on another person, or (d) is aided and abetted by one or more other persons
Second-Degree Forcible Sexual Offense	14-27.27	<ol style="list-style-type: none"> (1) The defendant engages in a sexual act other than vaginal intercourse (2) with a person and (3) the act is <ol style="list-style-type: none"> (a) by force and against the person's will or (b) with someone who is <ol style="list-style-type: none"> (i) mentally disabled, (ii) mentally incapacitated, or (iii) physically helpless and (4) the defendant knew or should have known that the victim was mentally disabled, mentally incapacitated, or physically helpless
Sexual Battery	14-27.33	<ol style="list-style-type: none"> (1) The defendant, for the purpose of sexual arousal, sexual gratification, or sexual abuse (2) engages in sexual contact with another person (3) (a) by force and against the will of the other person or <ol style="list-style-type: none"> (b) who is mentally disabled, mentally incapacitated, or physically helpless and the defendant knows or should reasonably know that the other person is mentally disabled, mentally incapacitated, or physically helpless
Crime Against Nature	14-177	<ol style="list-style-type: none"> (1) Commits a crime against nature <ul style="list-style-type: none"> • This crime requires penetration of, or by, a sexual organ, as illustrated by examples from case law

ASSAULTS*

CRIME	STATUTE (G.S.)	ELEMENTS
Assault with Deadly Weapon with Intent to Kill Inflicting Serious Injury	14-32(a)	(1) The defendant commits an assault (2) on another (3) with a deadly weapon and (4) with intent to kill and (5) inflicts serious injury
Assault with Deadly Weapon Inflicting Serious Injury	14-32(b)	(1) The defendant commits an assault (2) on another (3) with a deadly weapon and (4) inflicts serious injury
Assault with Deadly Weapon with Intent to Kill	14-32(c)	(1) The defendant commits an assault (2) on another (3) with a deadly weapon (4) with intent to kill
Assault Inflicting Serious Bodily Injury	14-32.4(a)	(1) The defendant commits an assault (2) on another and (3) inflicts serious bodily injury
Assault by Strangulation	14-32.4(b)	(1) The defendant commits an assault (2) on another and (3) inflicts physical injury (4) by strangulation
Simple Assault	14-33(a)	(1) The defendant commits an assault (2) on another
Assault Inflicting Serious Injury; Assault with Deadly Weapon	14-33(c)(1)	(1) The defendant commits an assault (2) on another and (3) inflicts serious injury
Assault with a Deadly Weapon	14-33(c)(1)	(1) The defendant commits an assault (2) on another (3) with a deadly weapon
Assault on Female	14-33(c)(2)	(1) The defendant is a male, (2) at least 18 years old, and (3) commits an assault (4) on a female
Habitual Misdemeanor Assault	14-33.2	(1) The defendant (a) (i) violates G.S. 14-33 and (ii) causes physical injury or (b) violates G.S. 14-34 and (2) has two or more prior felony or misdemeanor assault convictions and (3) the earlier of the convictions occurred no more than fifteen years before the date of the offense in Element (1)

* The term "assault" is defined by common law.

KIDNAPPING

CRIME	STATUTE (G.S.)	ELEMENTS
First-Degree Kidnapping	14-39	<ol style="list-style-type: none"> (1) The defendant <ol style="list-style-type: none"> (a) confines, (b) restrains, or (c) removes from one place to another (2) a person (3) <ol style="list-style-type: none"> (a) without the person's consent or, (b) if the person is under 16, without consent of the person's parent or guardian (4) for the purpose of <ol style="list-style-type: none"> (a) holding the victim as hostage, (b) holding the victim for ransom, (c) using the victim as a shield, (d) facilitating the commission of a felony, (e) facilitating flight following the commission of a felony, (f) doing serious bodily harm to the victim or any other person, (g) terrorizing the victim or any other person, (h) holding the victim in involuntary servitude, (i) trafficking another person, or (j) subjecting or maintaining the victim for sexual servitude and (5) <ol style="list-style-type: none"> (a) does not release the victim in a safe place, (b) seriously injures the victim, or (c) sexually assaults the victim
Second-Degree Kidnapping	14-39	Consists of elements (1) through (4) from First-Degree Kidnapping
False Imprisonment	Common law	<ol style="list-style-type: none"> (1) The defendant intentionally and unlawfully (2) <ol style="list-style-type: none"> (a) restrains or (b) detains (3) a person (4) without the person's consent
Felonious Restraint	14-43.3	<ol style="list-style-type: none"> (1) The defendant unlawfully restrains (2) a person (3) <ol style="list-style-type: none"> (a) without the person's consent or, (b) if the person is under 16, without consent of the person's parent or guardian and (4) transports the person by motor vehicle or other conveyance from the place of the initial restraint

BURGLARY AND OTHER HOUSEBREAKINGS

CRIME	STATUTE (G.S.)	ELEMENTS
First-Degree Burglary	14-51	<ol style="list-style-type: none"> (1) The defendant breaks and (2) enters (3) without consent (4) the dwelling house or sleeping apartment (5) of another (6) while it is actually occupied (7) at night (8) with the intent to commit any felony or larceny therein
Second-Degree Burglary	14-51	<ol style="list-style-type: none"> (1) The defendant breaks and (2) enters (3) without consent (4) the dwelling house or sleeping apartment, or any building within the curtilage of the dwelling, (5) of another (6) at night (7) with the intent to commit any felony or larceny therein
Breaking or Entering Building with Intent to Commit Felony or Larceny	14-54(a)	<ol style="list-style-type: none"> (1) The defendant breaks or (2) enters (3) without consent (4) any building (5) with the intent to commit any felony or larceny therein
Breaking or Entering Building with Intent to Terrorize or Injure Occupant	14-54(a1)	<p>Consists of elements (1) through (4) of Breaking or Entering Building with Intent to Commit Felony or Larceny, plus</p> <ol style="list-style-type: none"> (5) with the intent to terrorize or injure an occupant of the building
Misdemeanor Breaking or Entering	14-54(b)	<ol style="list-style-type: none"> (1) The defendant breaks or (2) enters (3) without consent (4) any building
Break or Enter Motor Vehicle with Intent to Commit Felony or Larceny	14-56	<ol style="list-style-type: none"> (1) The defendant breaks or (2) enters (3) without consent (4) any railroad car, motor vehicle, trailer, aircraft, boat, or other watercraft (5) containing goods, wares, freight, or anything of value (6) with the intent to commit any felony or larceny therein

LARCENY AND ROBBERY

CRIME	STATUTE (G.S.)	ELEMENTS
Felony Larceny	14-72	<ol style="list-style-type: none"> (1) The defendant takes (2) personal property (3) in the possession of another and (4) carries it away (5) without the consent of the possessor and (6) with the intent to deprive the possessor of its use permanently, (7) knowing that he or she was not entitled to it and (8) the larceny was <ol style="list-style-type: none"> (a) of property worth more than \$1,000; (b) from the person; (c) committed pursuant to burglary, breaking out of a dwelling, breaking or entering a building, breaking or entering a building that is a place of religious worship, or burglary with explosives; (d) of an explosive or incendiary device; (e) of a firearm; (f) of a record or paper in the custody of the N.C. State Archives; or (g) of a horse, mule, swine, cattle, or dog
Misdemeanor Larceny	14-72	<ol style="list-style-type: none"> (1) The defendant takes (2) personal property (3) in the possession of another and (4) carries it away (5) without the consent of the possessor and (6) with the intent to deprive the possessor of its use permanently, (7) knowing that he or she was not entitled to it
Larceny, Concealment, or Destruction of Wills	14-77	<p>“If any person, either during the life of the testator or after his death, shall steal or, for any fraudulent purpose, shall destroy or conceal any will, codicil or other testamentary instrument, he shall be guilty of a Class 1 misdemeanor.”</p>
Robbery with a Dangerous Weapon	14-87	<ol style="list-style-type: none"> (1) The defendant commits or attempts to commit larceny (2) from the person or from the person’s presence (3) by the possession, use, or threatened use of a firearm or other dangerous weapon (4) that endangers or threatens the life of a person
Common Law Robbery	Common law; <i>see</i> 14-87.1	<ol style="list-style-type: none"> (1) The defendant commits larceny (2) from the person or from the person’s presence (3) by violence or intimidation
Extortion	14-118.4	<ol style="list-style-type: none"> (1) The defendant threatens or communicates a threat to another (2) with the intent to obtain wrongfully (3) anything of value, any acquittance, any advantage, or any immunity

OTHER FINANCIAL AND RELATED CRIMES

CRIME	STATUTE (G.S.)	ELEMENTS
Embezzlement by an Agent or Fiduciary	14-90	<ol style="list-style-type: none"> (1) The defendant fraudulently or knowingly and willingly (2) uses for a purpose other than that for which the defendant received it (3) the property of another (4) held by the defendant under his or her care <ul style="list-style-type: none"> • Applies to fiduciaries, including a guardian, administrator, executor, trustee, or any receiver • Requires that the property be entrusted to the defendant; if no entrustment, the taking is larceny or obtaining property by false pretenses
Obtain Property by False Pretenses	14-100	<ol style="list-style-type: none"> (1) The defendant makes a representation about a past or existing fact or a future event (2) that is false and (3) is calculated and intended to deceive, and (4) the representation does in fact deceive another person, and (5) the person thereby obtains, or attempts to obtain, money, goods, property, services, choses in action, or any other thing of value from that other person
Theft of Financial Transaction Card	14-113.9 (a)(1)	<ol style="list-style-type: none"> (1) The defendant <ol style="list-style-type: none"> (a) takes, (b) obtains, or (c) withholds (2) a financial transaction card (3) from another (4) without the cardholder's consent and (5) with the intent to use it
Forgery of Financial Transaction Card	14-113.11	<ol style="list-style-type: none"> (1) The defendant <ol style="list-style-type: none"> (a) falsely makes or embosses a purported financial transaction card or utters a falsely-made or falsely-embossed financial transaction card; (b) falsely encodes, duplicates, or alters existing encoded information on a financial transaction card or utters a falsely-encoded, -duplicated, or -altered card; or (c) not being the cardholder or a person authorized by the cardholder, signs a financial transaction card (2) with the intent to defraud

OTHER FINANCIAL AND RELATED CRIMES, cont'd

CRIME	STATUTE (G.S.)	ELEMENTS
Financial Transaction Card Fraud	14-113.13	(1) The defendant, with the intent to defraud, (2) uses a financial transaction card (3) (a) obtained or retained, or received with knowledge that it was obtained or retained, in violation of 14-113.9 or 14-113.11; (b) that he or she knows is forged, expired, revoked, or altered; or (c) that he or she knows was obtained by a fraudulent application in violation of 14-113.13(c) (4) for the purpose of obtaining money, goods, services, or anything else of value
Financial Identity Theft	14-113.20	(1) The defendant knowingly (2) (a) obtains, (b) possesses, or (c) uses (3) identifying information of another person, living or dead, (4) with the intent to fraudulently represent the person is the other person (5) for the purpose of (a) making financial or credit transactions in the other person's name; (b) avoiding legal consequences; or (c) obtaining anything of value, benefit, or advantage
Common Law Forgery	See 14-119, -120	Common law elements: (1) The defendant makes a false writing (2) that is apparently capable of effecting a fraud (3) with the intent to defraud
Common Law Uttering	See 14-120	Common law elements: (1) The defendant utters as true (2) a false writing (3) that is apparently capable of effecting a fraud (4) with the intent to defraud and (5) knowing that the writing is false
Forgery and Counterfeiting of Instruments	14-119	(1) The defendant (a) forges or (b) counterfeits (2) an instrument (3) with the intent to injure or defraud (4) a person, financial institution, or governmental unit

OTHER FINANCIAL AND RELATED CRIMES, *cont'd*

CRIME	STATUTE (G.S.)	ELEMENTS
Uttering Forged Instruments	14-120	<ol style="list-style-type: none">(1) The defendant utters, publishes, passes, delivers, or attempts to pass or deliver(2) an instrument(3) <ol style="list-style-type: none">(a) that is false, forged, or counterfeit or(b) that contains a false, forged, or counterfeit endorsement(4) <ol style="list-style-type: none">(a) for the sake of gain or(b) with the intent to defraud or injure another and(5) knowing that<ol style="list-style-type: none">(a) it was falsely forged or counterfeited or(b) falsely endorsed
Forging an Endorsement on Checks and Securities	14-120	<ol style="list-style-type: none">(1) The defendant falsely makes, forges, or counterfeits(2) an endorsement(3) on an instrument(4) <ol style="list-style-type: none">(a) for the sake of gain or(b) with the intent to defraud or injure another

MISCELLANEOUS

CRIME	STATUTE (G.S.)	ELEMENTS
Communicating Threats	14-277.1	(1) The defendant, without lawful authority, (a) willfully threatens to physically injure (i) another person or (ii) that person's child, sibling, spouse, or dependent or (b) willfully threatens to damage another's property and (2) communicates that threat to the other person (3) in a manner that would make a reasonable person believe it is likely to be carried out and (4) the threat is believed by the threatened person
Using Threatening Language on the Telephone	14-196(a)(2)	(1) The defendant, in a telephonic communication, (2) uses words or language (3) (a) threatening to inflict bodily harm to any person, (b) threatening physical injury to another's property, or (c) for the purpose of extorting something of value from another
Repeated Telephone Calls to Harass, etc.	14-196(a)(3)	(1) The defendant telephones (2) another (3) repeatedly (4) for the purpose of (a) abusing, (b) annoying, (c) threatening, (d) terrifying, (e) harassing, or (f) embarrassing (5) a person at the called number
Using Electronic Mail or Communication to Threaten or Extort	14-196(b)(1)	(1) The defendant uses, in (a) electronic mail or (b) electronic communication, (2) words or language (3) (a) threatening to inflict bodily harm to any person, (b) threatening physical injury to the property of another, or (c) for the purpose of extorting money or other things of value from any person

MISCELLANEOUS, cont'd

CRIME	STATUTE (G.S.)	ELEMENTS
Stalking	14-277.3A	(1) The defendant, willfully and (2) without legal purpose, (3) (a) harasses another person on more than one occasion or (b) engages in a course of conduct directed at a specific person (4) when the defendant knows or should know that the harassment or course of conduct would cause a reasonable person to (a) fear for the safety of (i) him or herself, (ii) his or her immediate family, or (iii) his or her close personal associates or (b) suffer substantial emotional distress by placing that person in fear of (i) death, (ii) bodily injury, or (iii) continued harassment • This constitutes a misdemeanor • A repeat offense is punishable as a felony
Interfering with Emergency Communication	14-286.2	(1) The defendant (a) intentionally interferes (i) with an emergency communication, (ii) knowing that the communication is an emergency communication, and (iii) while not making an emergency communication himself or herself and (b) interferes (i) with a communication instrument or other emergency equipment (ii) with the intent to prevent an emergency communication
Violation of a Domestic Violence Protective Order	50B-4.1	(1) The defendant knowingly (2) violates a valid protective order entered pursuant to (a) Chapter 50B of the General Statutes, (b) a court of another state, or (c) a court of an Indian tribe • This constitutes a misdemeanor • A repeat offense is punishable as a felony

Note: The list of crimes in this appendix is from the Alamance County Elder A/N/E Legal Resources and Remedies Booklet. The elements are from Jessica Smith, North Carolina Crimes: A Guidebook on the Elements of Crime (7th ed. 2012).