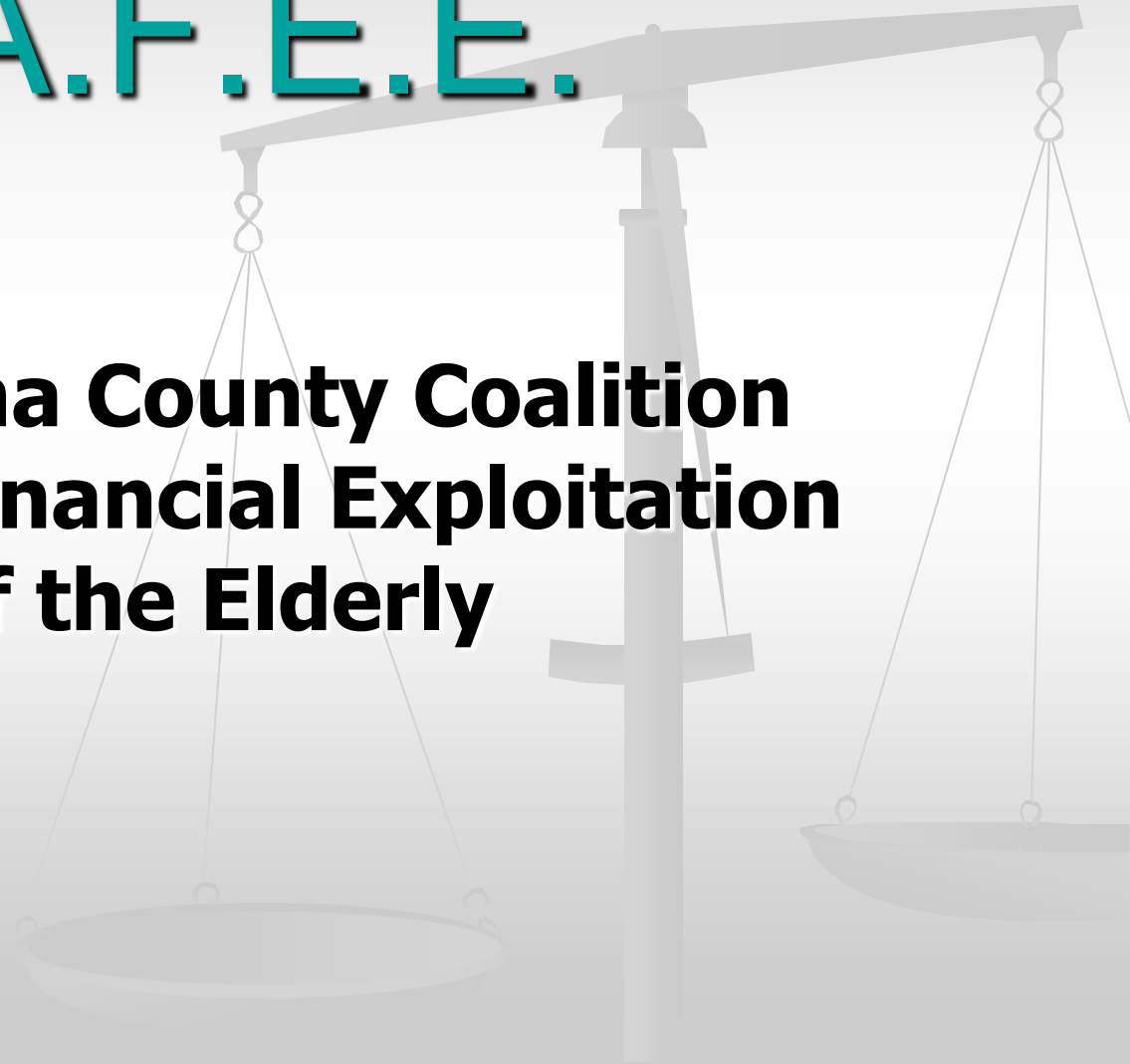


A Successful Strategy to Identify and Combat FINANCIAL EXPLOITATION



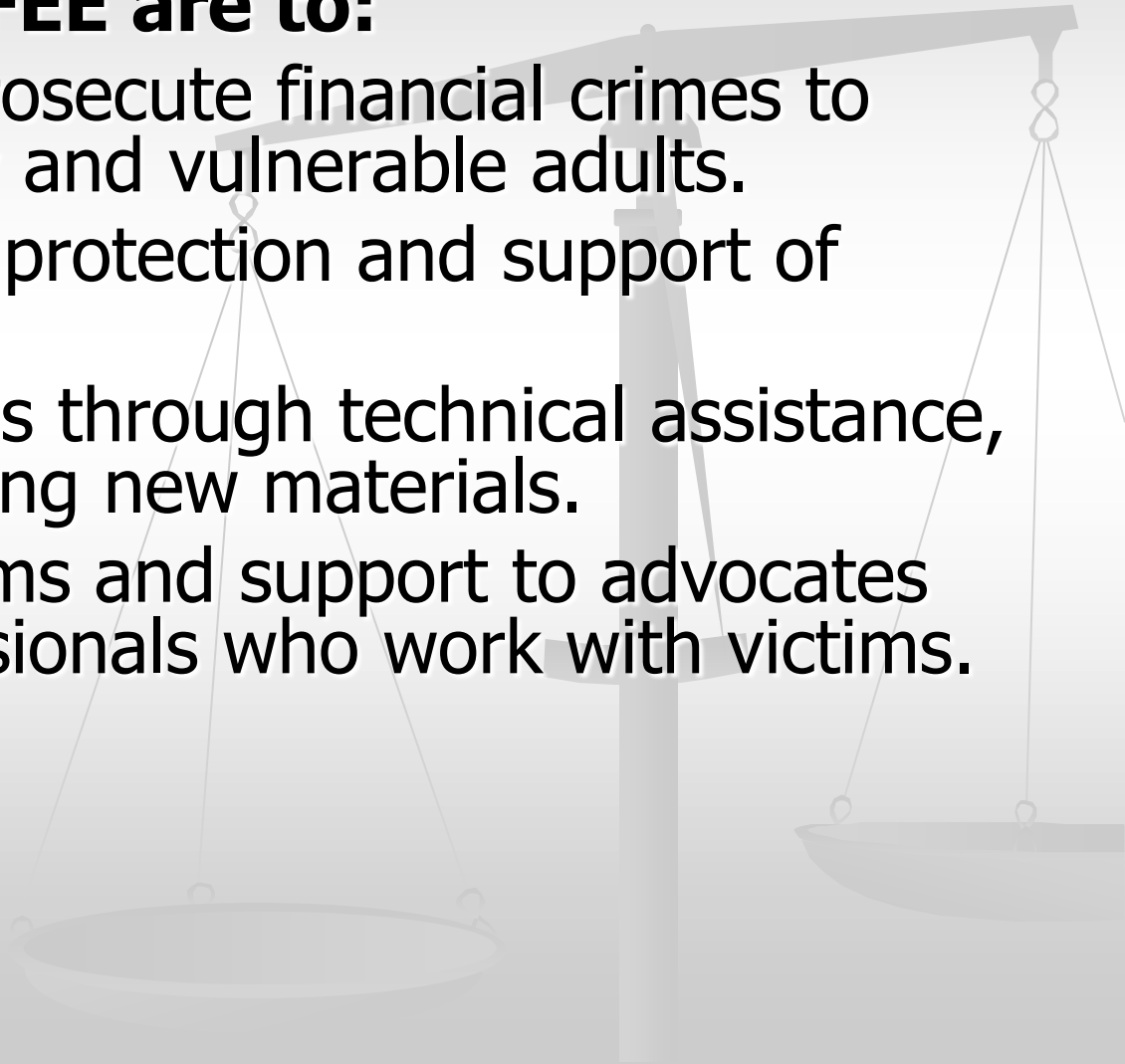
OK
C.A.F.E.E.

**Oklahoma County Coalition
Against Financial Exploitation
of the Elderly**



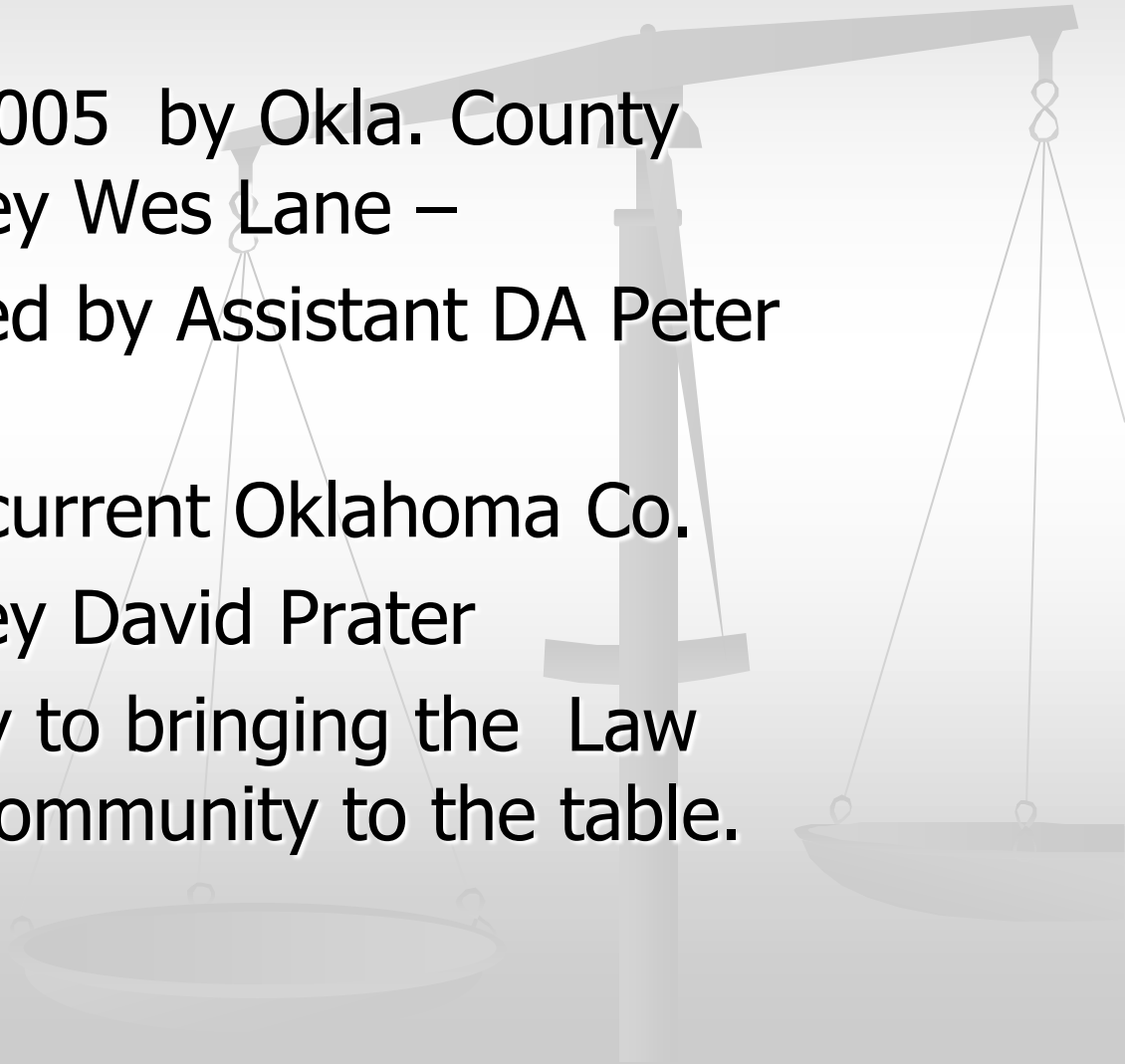
C.A.F.E.E

- **The goals of CAFEE are to:**
- Investigate and prosecute financial crimes to protect the elderly and vulnerable adults.
- Improve services, protection and support of victims.
- Assist professionals through technical assistance, training and creating new materials.
- Give voice to victims and support to advocates and others professionals who work with victims.



The Origins of OK CAFEE

- Convened in 2005 by Okla. County District Attorney Wes Lane –
- Issues identified by Assistant DA Peter Haddock
- Continued by current Oklahoma Co. District Attorney David Prater
- DA's Office key to bringing the Law Enforcement community to the table.

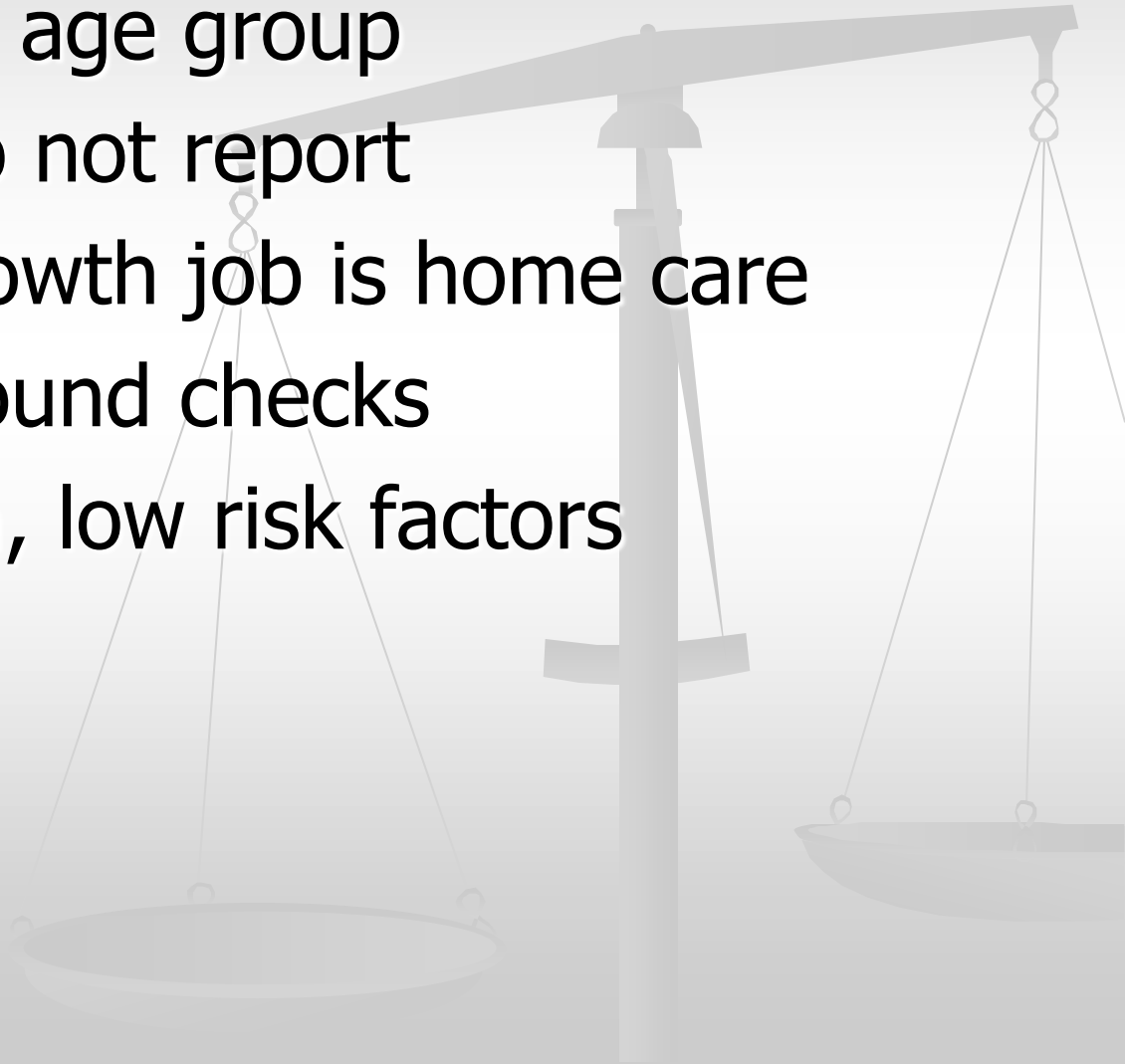


OK CAFEE Membership

- In addition to the DA's Office, members include:
 - OK Attorney General's Office
 - All municipal police departments in Okla. County and the Ok. County Sheriff's office
 - Adult Protective Services – DHS
 - Office of the State LTC Ombudsman
 - Oklahoma County TRIAD
 - Okla. Bankers Association
 - Okla. Insurance Department and others

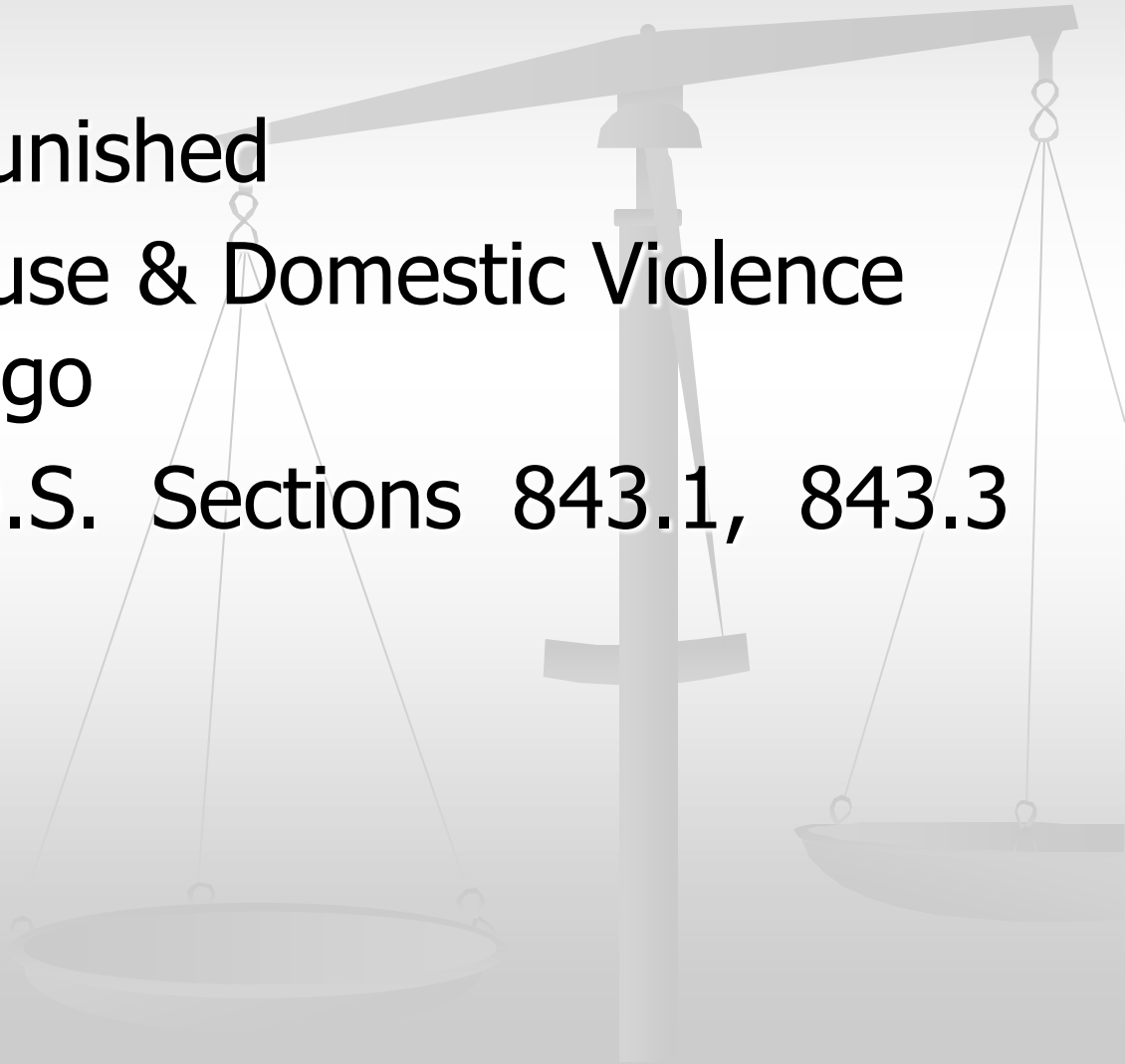
Elder Abuse is exploding

- Fastest growing age group
- Victims often do not report
- Third fastest growth job is home care
- Minimal background checks
- High temptation, low risk factors



Financial Exploitation

- Escalating
- Often goes unpunished
- Where Child Abuse & Domestic Violence were 30 years ago
- A Crime (21 O.S. Sections 843.1, 843.3 and 843.4)

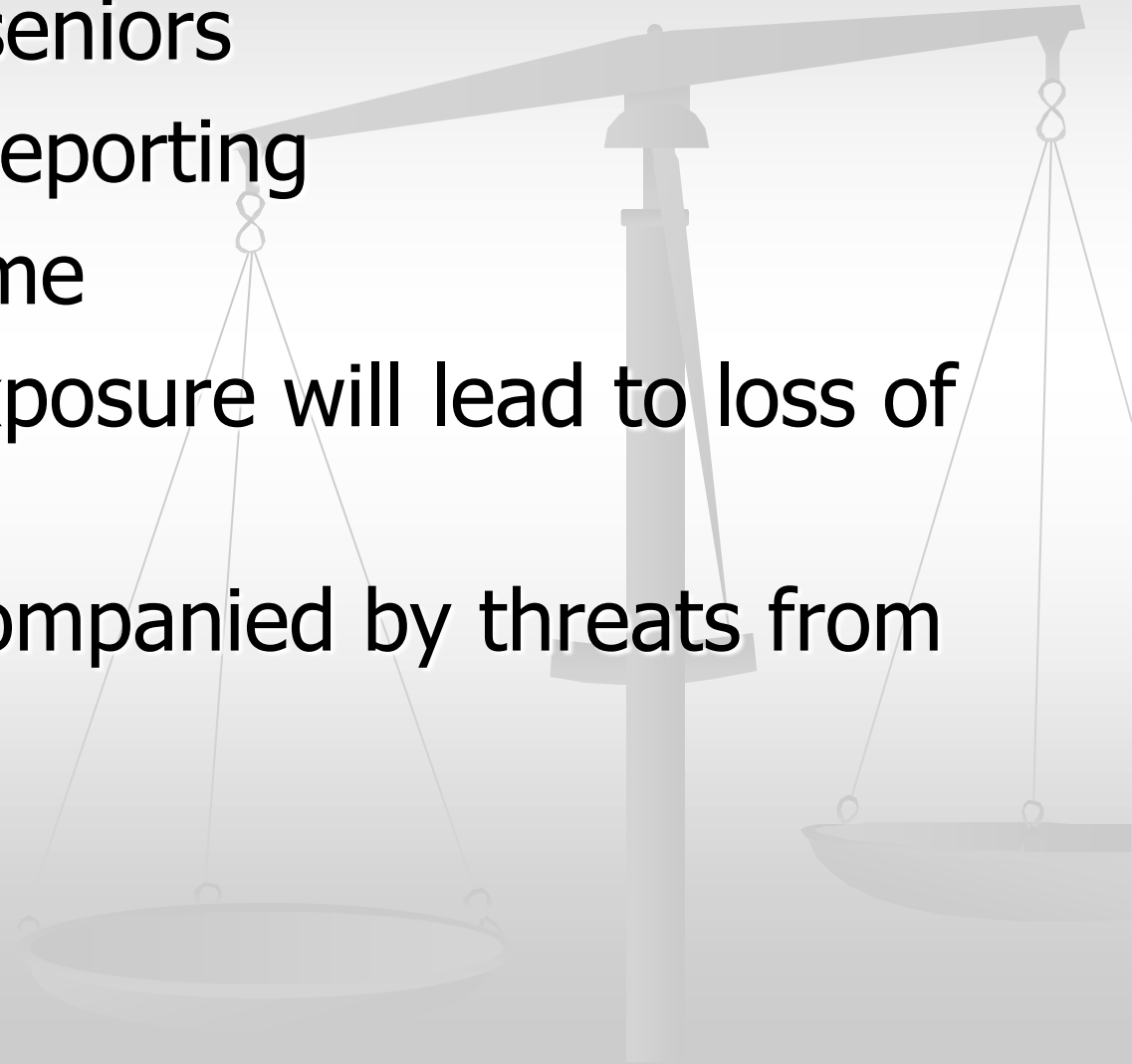


2004 Statistics

- Federal govt. spends \$520 million on programs combating violence against women
- Federal govt. spends \$6.7 billion on child abuse prevention efforts
- Federal govt. spends \$153.5 million on programs addressing issues of elder abuse, neglect & exploitation

UNDERSTANDING THE DYNAMICS

- Fears of many seniors
- Leads to underreporting
- Feelings of shame
- Concern that exposure will lead to loss of independence
- Sometimes accompanied by threats from perpetrator

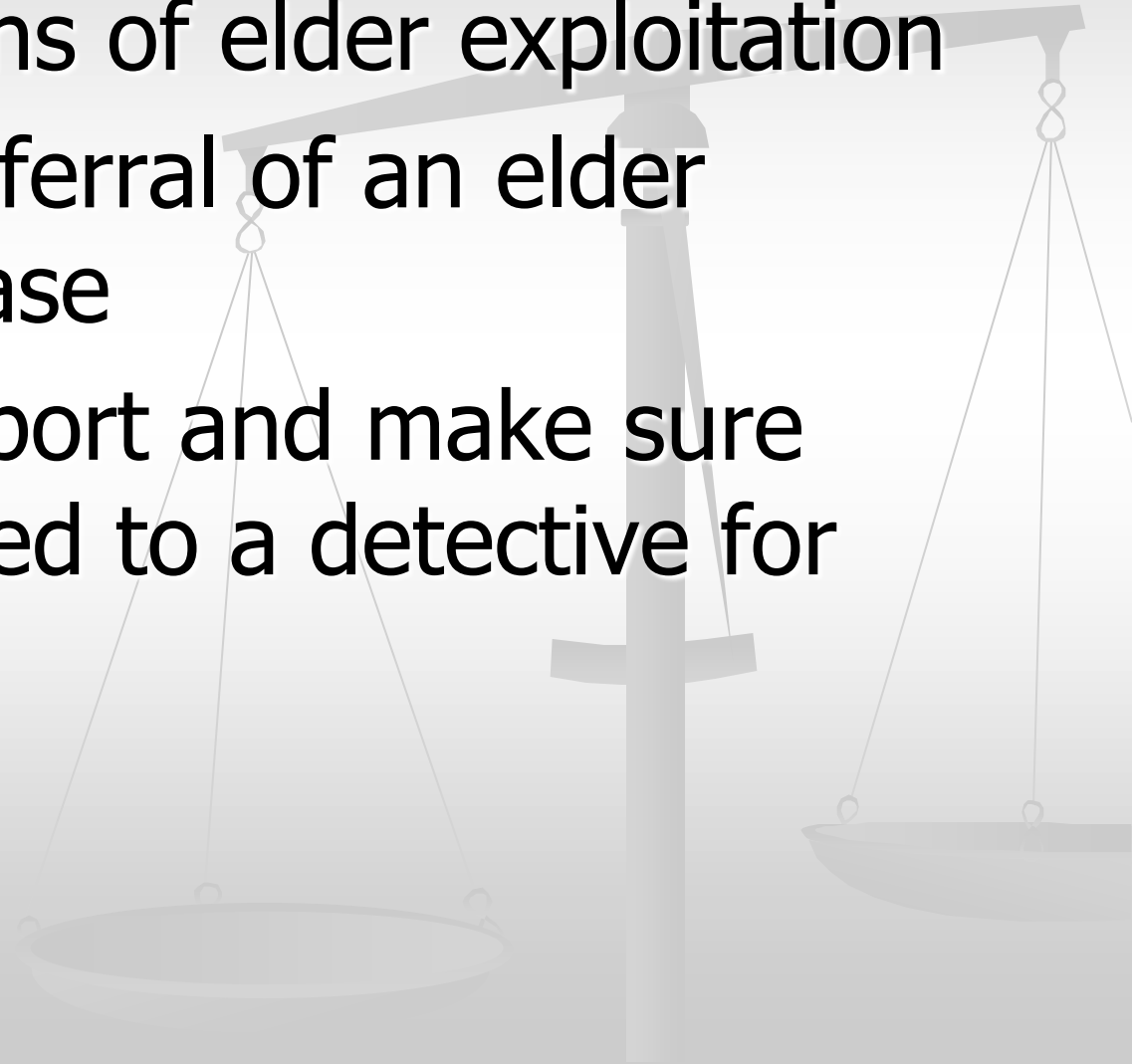


LESSONS LEARNED FROM DOMESTIC VIOLENCE

- If not punished, the perpetrator **WILL** abuse again
- It is possible to convict even without the assistance or testimony of the victim
- It is a crime affecting **NOT JUST** the abused (violates State Law which has an interest in protecting vulnerable adults)

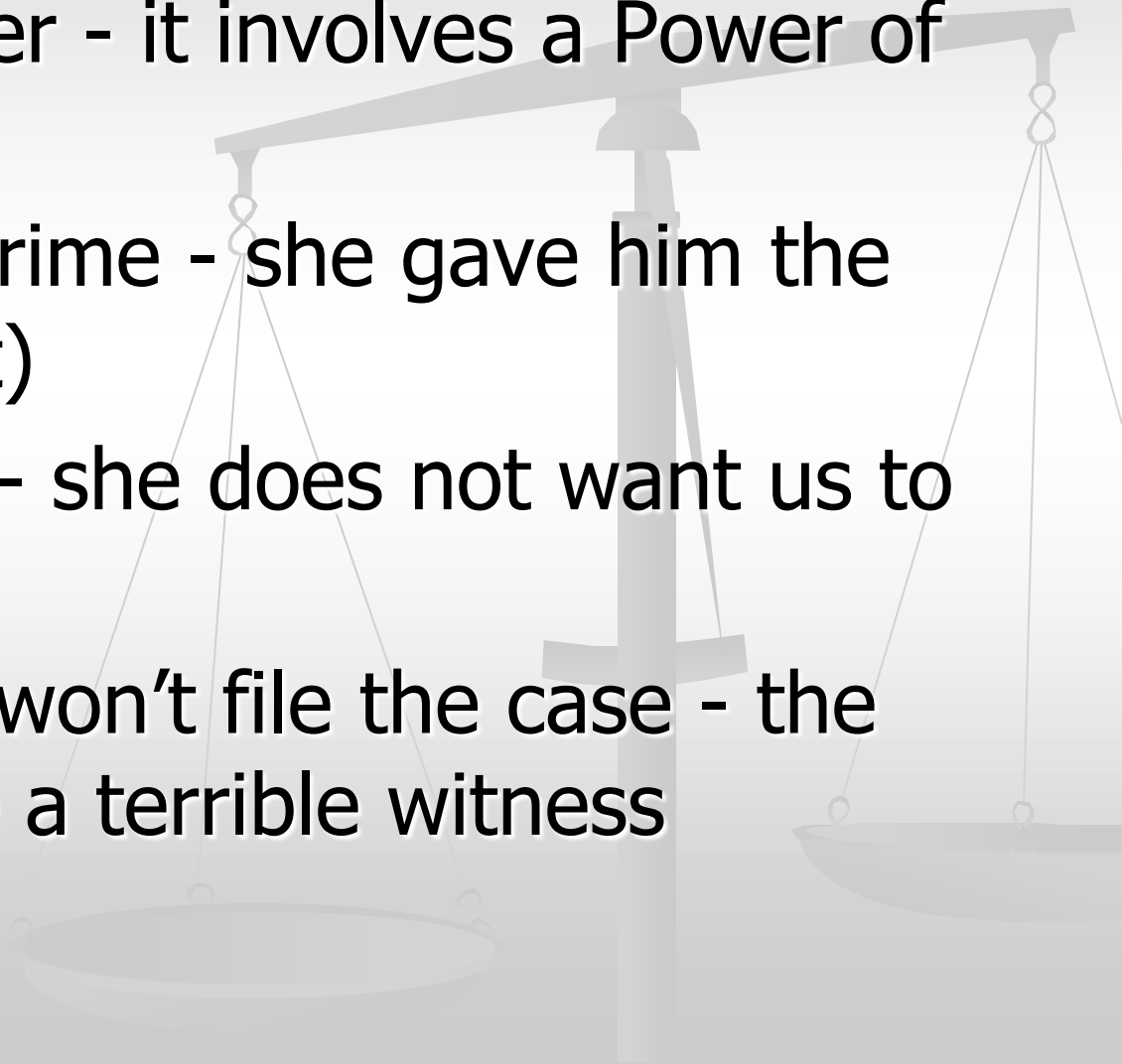
CAFEE goals for Law Enforcement Professionals

- Recognize signs of elder exploitation
- Respond to referral of an elder exploitation case
- Take initial report and make sure case is assigned to a detective for follow up



Common reactions among law enforcement

- It is a civil matter - it involves a Power of Attorney
- It cannot be a crime - she gave him the money (consent)
- It can't be filed - she does not want us to prosecute
- The prosecutor won't file the case - the victim will make a terrible witness

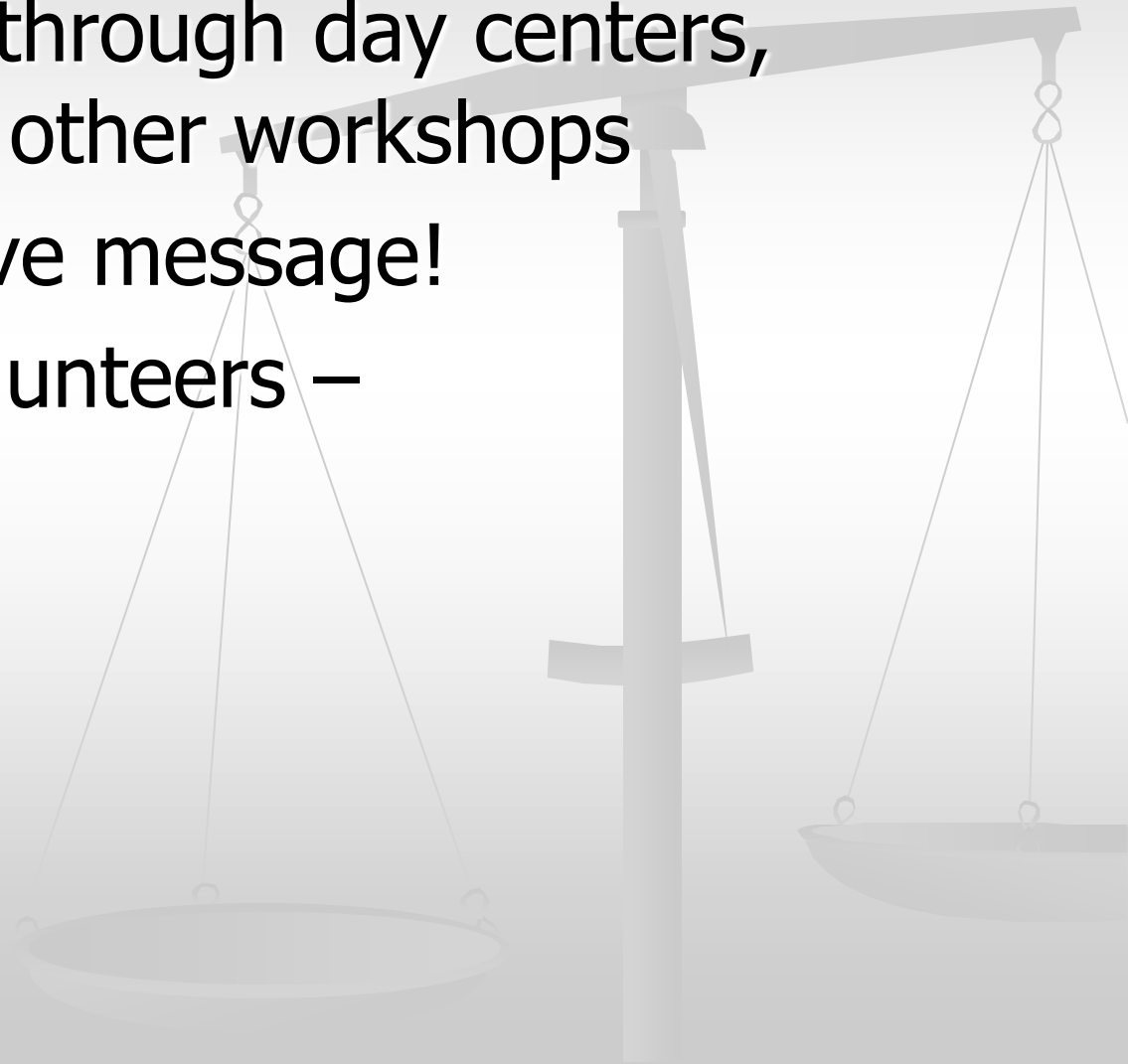


OK CAFEE Activities to Enhance Law Enforcement Response to Financial Exploitation

- OK CAFEE gets Police Detectives, Sheriff's Deputies, APS, Ombudsmen, and Prosecutors "to the table" every month to discuss related issues and "staff" actual cases.
- Assistant D.A. Peter Haddock and TRIAD's Sheryl Presley conduct trainings for Oklahoma City Police Dept.'s CLEET Academy. [CLEET statewide requires training on exploitation.]
- Encourages "dual call-out" of law enforcement and APS for better coordination on investigations.

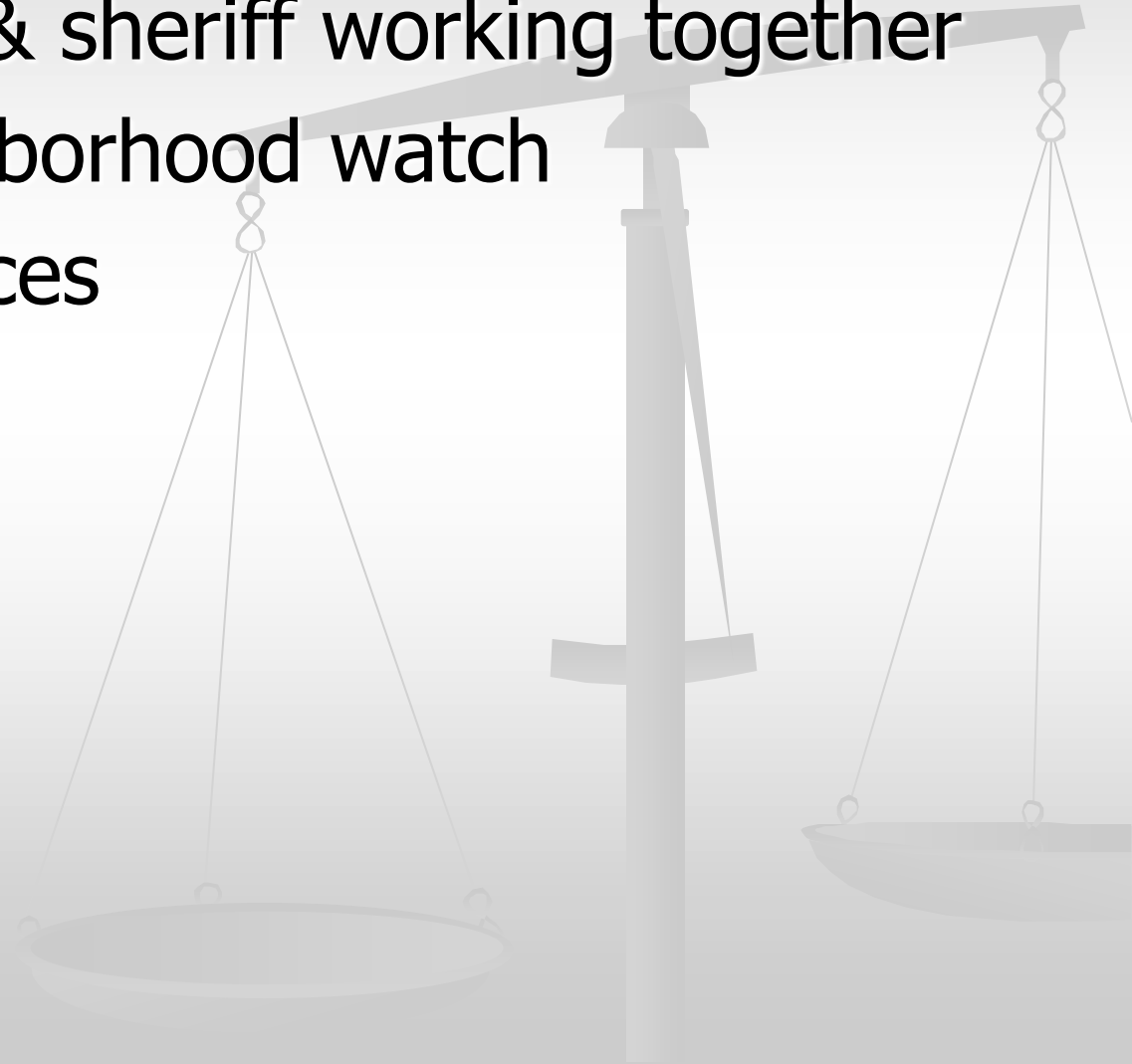
Let's Involve Seniors in the Process:

- Reaching them through day centers, senior fairs and other workshops
- Provide a positive message!
- Use them as volunteers –
- DA's office
- TRIAD



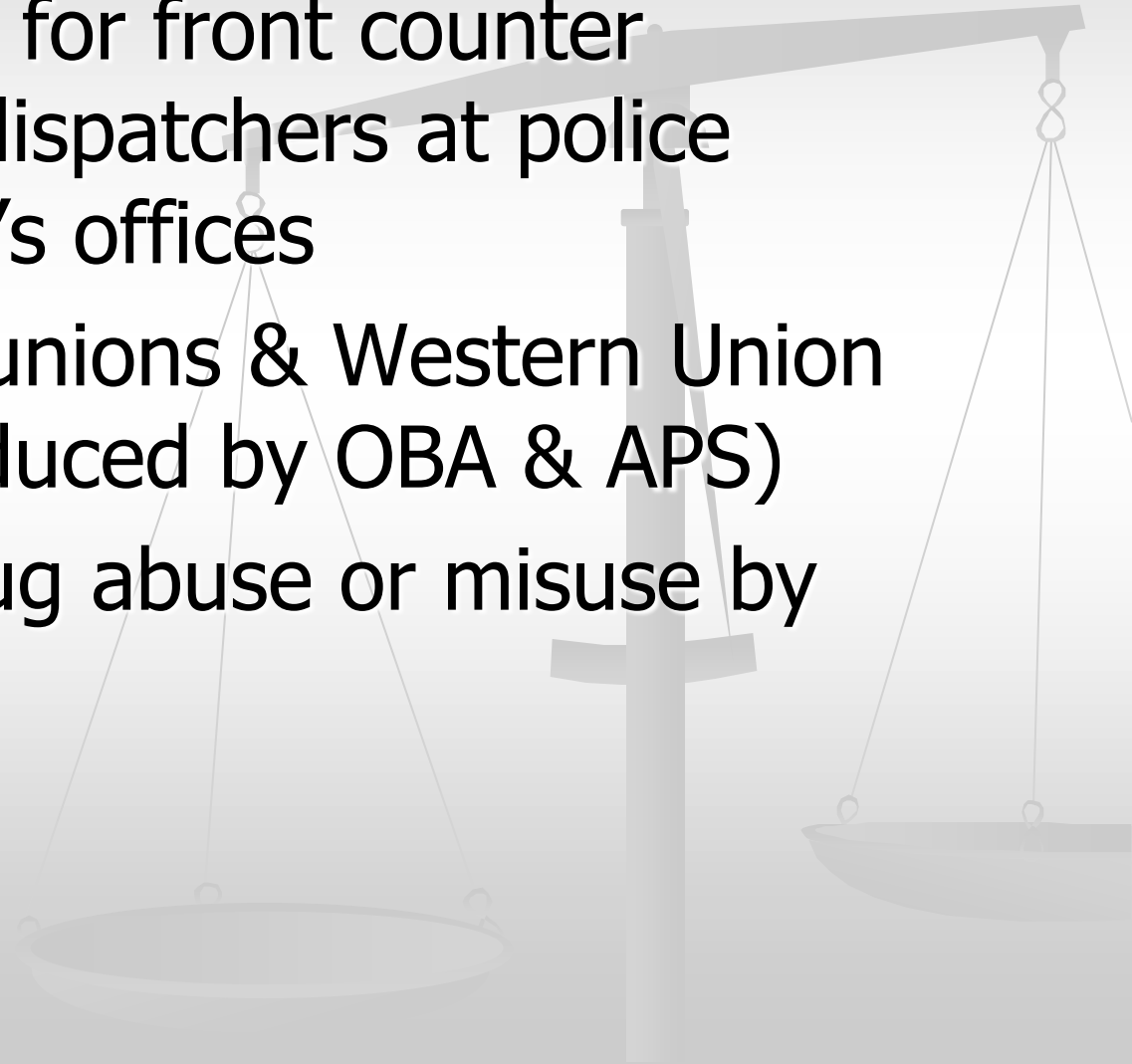
TRIAD

- Seniors, police & sheriff working together
- A form of neighborhood watch
- National resources
- Local initiatives

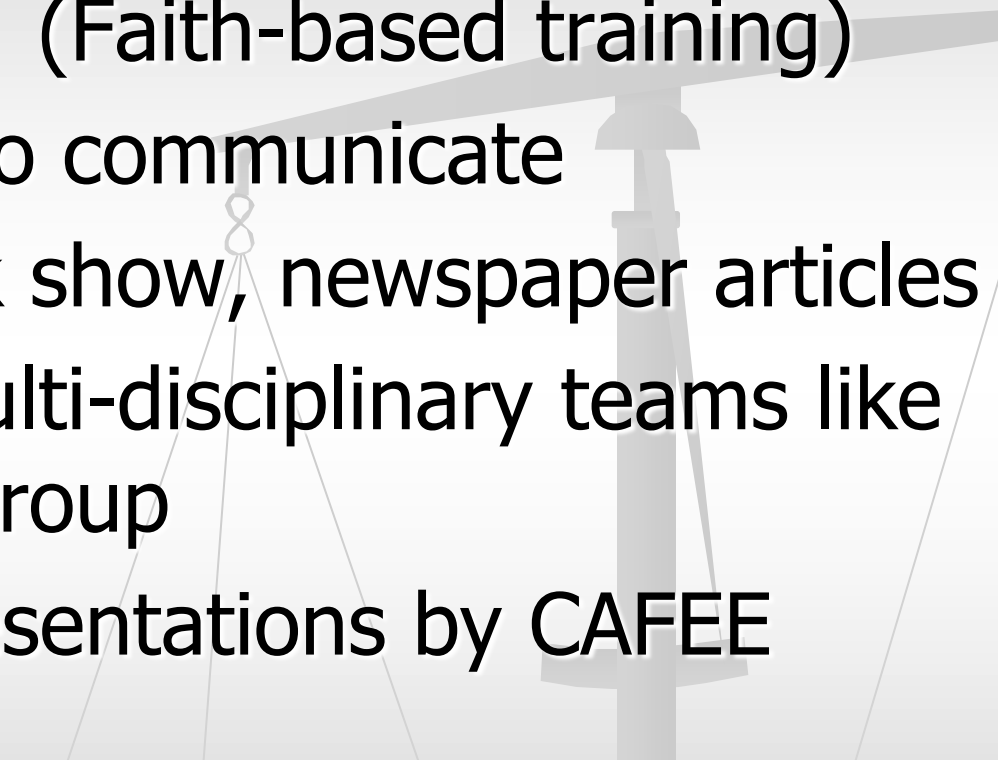


Increasing Awareness:

- Provide training for front counter personnel and dispatchers at police stations /sheriff's offices
- Banks & credit unions & Western Union (i.e., Video produced by OBA & APS)
- Pharmacies (drug abuse or misuse by Caretakers)



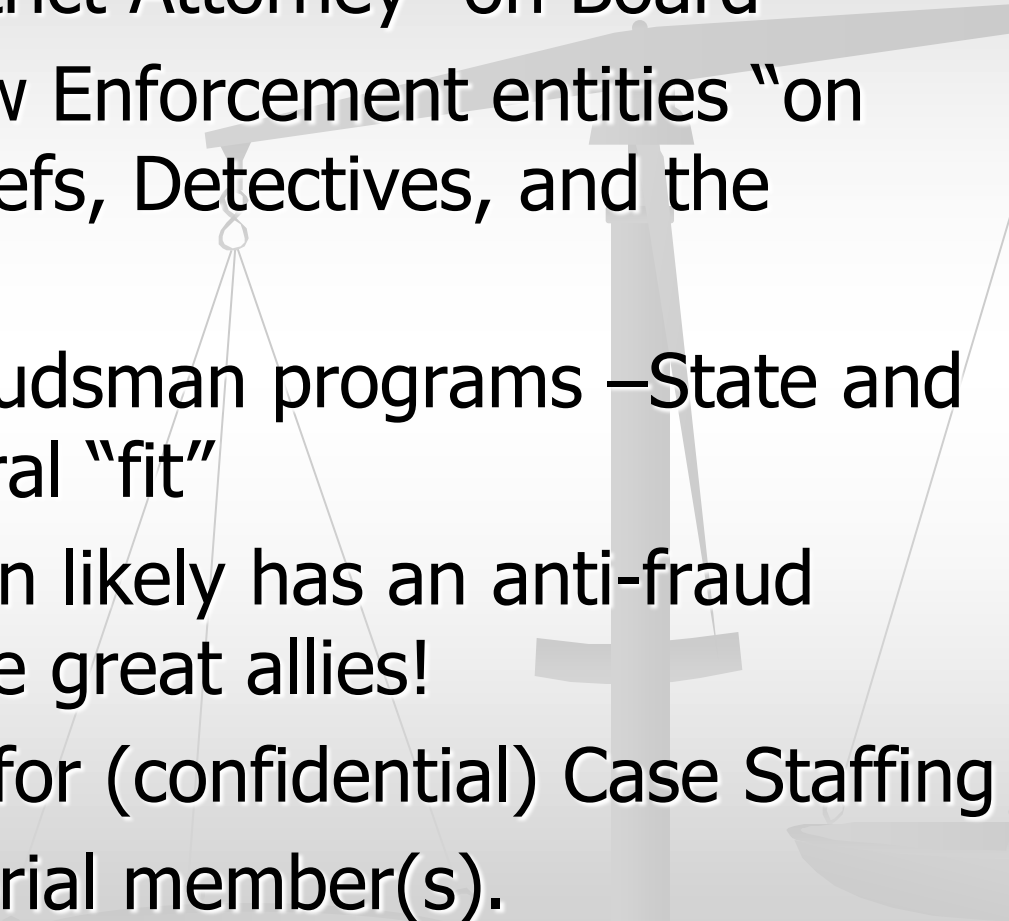
Increasing Awareness, continued

- Train the clergy (Faith-based training)
 - Use the media to communicate
 - TV, Radio talk show, newspaper articles
 - Formation of multi-disciplinary teams like our OK CAFEE group
 - Other public presentations by CAFEE members
- 

Legislative Advocacy by CAFEE

- In cooperation with the Oklahoma Aging Partnership (OAP), the Office of the State Long-Term Care Ombudsman, and APS, several pieces of Legislation have been passed.
- Amendments to both Criminal Statutes and Protective Services for Vulnerable Adults law have been enacted.
- Statute of Limitations, definitions, and criminal penalties have been improved with CAFEE's support

Tips for Creating Similar Coalitions

- Must have the District Attorney “on Board”
 - Then get Local Law Enforcement entities “on board”—Police Chiefs, Detectives, and the County Sheriff.
 - APS and LTC Ombudsman programs –State and Local – are a natural “fit”
 - Bankers Association likely has an anti-fraud section. They make great allies!
 - Must include time for (confidential) Case Staffing with the Prosecutorial member(s).
- 

Recent Amendments

Title 21 OK Statutes Sect. 843.1

- **This Amendment Went Into Effect : 11/01/2007**
- A. 1. No caretaker or other person shall abuse, commit **financial neglect**, neglect, commit sexual abuse, or exploit any person entrusted to the care of such caretaker or other person in a nursing facility or other setting, or knowingly cause, secure, or permit any of these acts to be done.
- 2. For purposes of this section, the terms, "abuse", "**financial neglect**", "neglect", "sexual abuse", and "exploit" shall have the same meaning as such terms are defined and clarified in Section 10-103 of Title 43A of the Oklahoma Statutes.

21 O.S. 843.1 continued

- B. 1. Any person convicted of a violation of this section, except as provided in paragraph 2 of this subsection, shall be guilty of a felony. The violator, upon conviction, shall be punished by imprisonment in the custody of the Department of Corrections for a term not to exceed ten (10) years, and by a fine not exceeding Ten Thousand Dollars (\$10,000.00), or by both such fine and imprisonment. Such person's term shall further be subject to the provisions of Section 13.1 of this title.
- -----
- **C. Consent shall not be a defense for any violation of this section.**

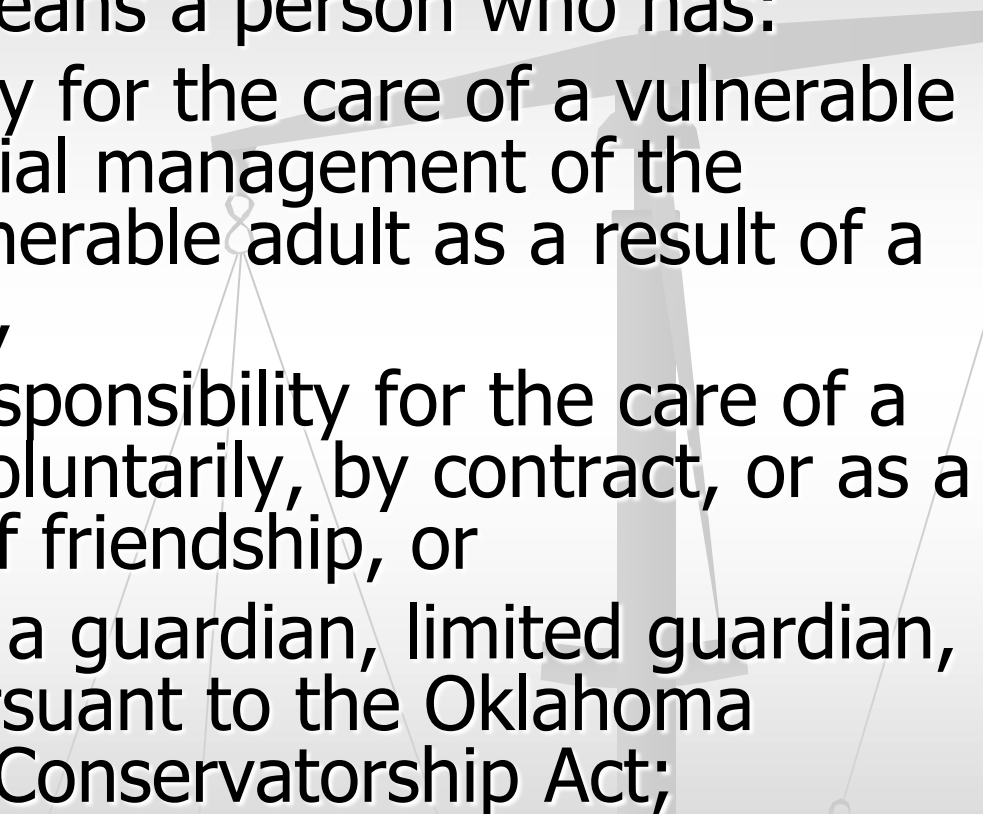
Title 21 OK Sect. 843.1 (Continued)

- D. Except for persons sentenced to life or life without parole, any person sentenced to imprisonment for two (2) years or more for a violation of paragraph 2 of subsection B of this section shall be required to serve a term of post-imprisonment supervision pursuant to subparagraph f of paragraph 1 of subsection A of Section 991a of Title 22 of the Oklahoma Statutes under conditions determined by the Department of Corrections. **The jury shall be advised that the mandatory post-imprisonment supervision shall be in addition to the actual imprisonment.**

Definitions

- 5. "Vulnerable adult" means an individual who is an incapacitated person or who, because of physical or mental disability, incapacity, or other disability, is substantially impaired in the ability to provide adequately for the care or custody of himself or herself, or is unable to manage his or her property and financial affairs effectively, or to meet essential requirements for mental or physical health or safety, or to protect himself or herself from abuse, verbal abuse, neglect, or exploitation without assistance from others;

Definitions continued

- 6. "**Caretaker**" means a person who has:
 - a. the responsibility for the care of a vulnerable adult or the financial management of the resources of a vulnerable adult as a result of a family relationship,
 - b. assumed the responsibility for the care of a vulnerable adult voluntarily, by contract, or as a result of the ties of friendship, or
 - c. been appointed a guardian, limited guardian, or conservator pursuant to the Oklahoma Guardianship and Conservatorship Act;
- 

Definitions (continued)

- 9. "**Exploitation**" or "**exploit**" means an unjust or improper use of the resources of a vulnerable adult for the profit or advantage, pecuniary or otherwise, of a person other than the vulnerable adult through the use of undue influence, coercion, harassment, duress, deception, false representation or false pretense;

Definitions continued

- “Financial neglect” means repeated instances by a caretaker, or other person, who has assumed the role of financial management, of failure to use the resources available to restore or maintain the health and physical well-being of a vulnerable adult, including, but not limited to:
 - a. squandering or negligently mismanaging the money, property, or accounts of a vulnerable adult,
 - b. refusing to pay for necessities or utilities in a timely manner, or
 - c. providing substandard care to a vulnerable adult despite the availability of adequate financial resources

New Law- 21 O.S. Sect 843.4 (effective July 1, 2006)

- SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 843.4 of Title 21, unless there is created a duplication in numbering, reads as follows:
- A. As used in this section, “exploitation of an elderly person or disabled adult” means:
- 1. Knowingly, by deception or intimidation, obtaining or using, or endeavoring to obtain or use, an elderly person’s or disabled adult’s funds, assets, or property with the intent to temporarily or permanently deprive the elderly person or disabled adult of the use, benefit, or possession of the funds, assets, or property, or to benefit someone other than the elderly person or disabled adult, by a person who:

21 O.S. Sect. 843.4 (continued)

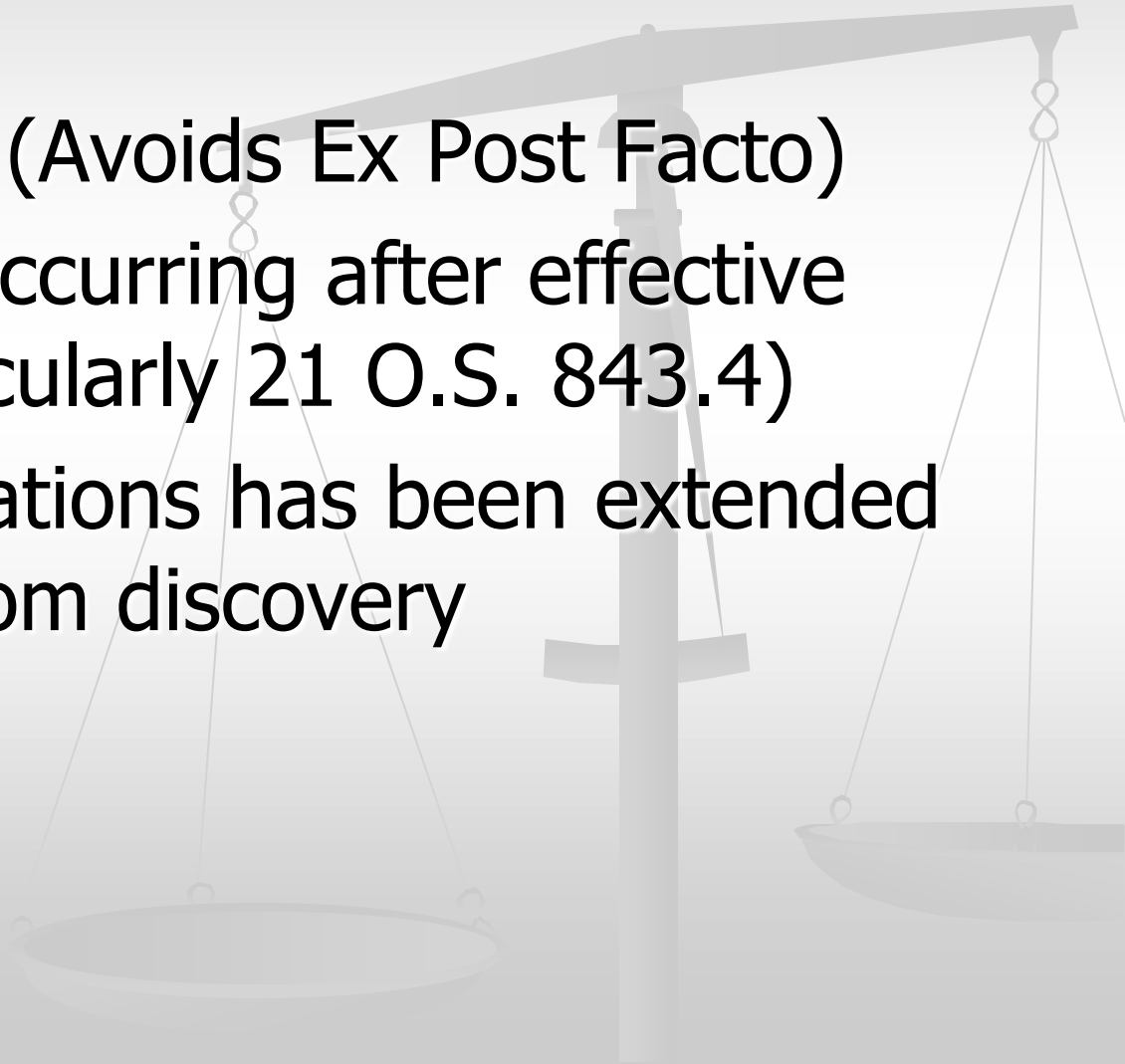
- a. stands in a position of trust and confidence with the elderly person or disabled adult, or
- b. has a business relationship with the elderly person or disabled adult, or
- 2. Obtaining or using, endeavoring to obtain or use, or conspiring with another to obtain or use an elderly person's or disabled adult's funds, assets, or property with the intent to temporarily or permanently deprive the elderly person or disabled adult of the use, benefit, or possession of the funds, assets, or property, or to benefit someone other than the elderly person or disabled adult, by a person who knows or reasonably should know that the elderly person or disabled adult lacks the capacity to consent.

21O S. Sect.843.4 (part 3)

- B. 1. If the funds, assets, or property involved in the exploitation of the elderly person or disabled adult are valued at **One Hundred Thousand Dollars (\$100,000.00) or more**, the violator commits a felony punishable by imprisonment in the custody of the Department of Corrections for **a term not more than fifteen (15) years and by a fine in an amount not exceeding Ten Thousand Dollars (\$10,000.00)**.
- 2. If the funds, assets, or property involved in the exploitation of the elderly person or disabled adult are **valued at less than One Hundred Thousand Dollars (\$100,000.00)**, the violator commits a felony punishable by imprisonment in the custody of the Department of Corrections for **a term not more than ten (10) years and by a fine in an amount not exceeding Ten Thousand Dollars (\$10,000.00)**.
- C. For purposes of this section, “elderly person” means any person sixty-two (62) years of age or older.

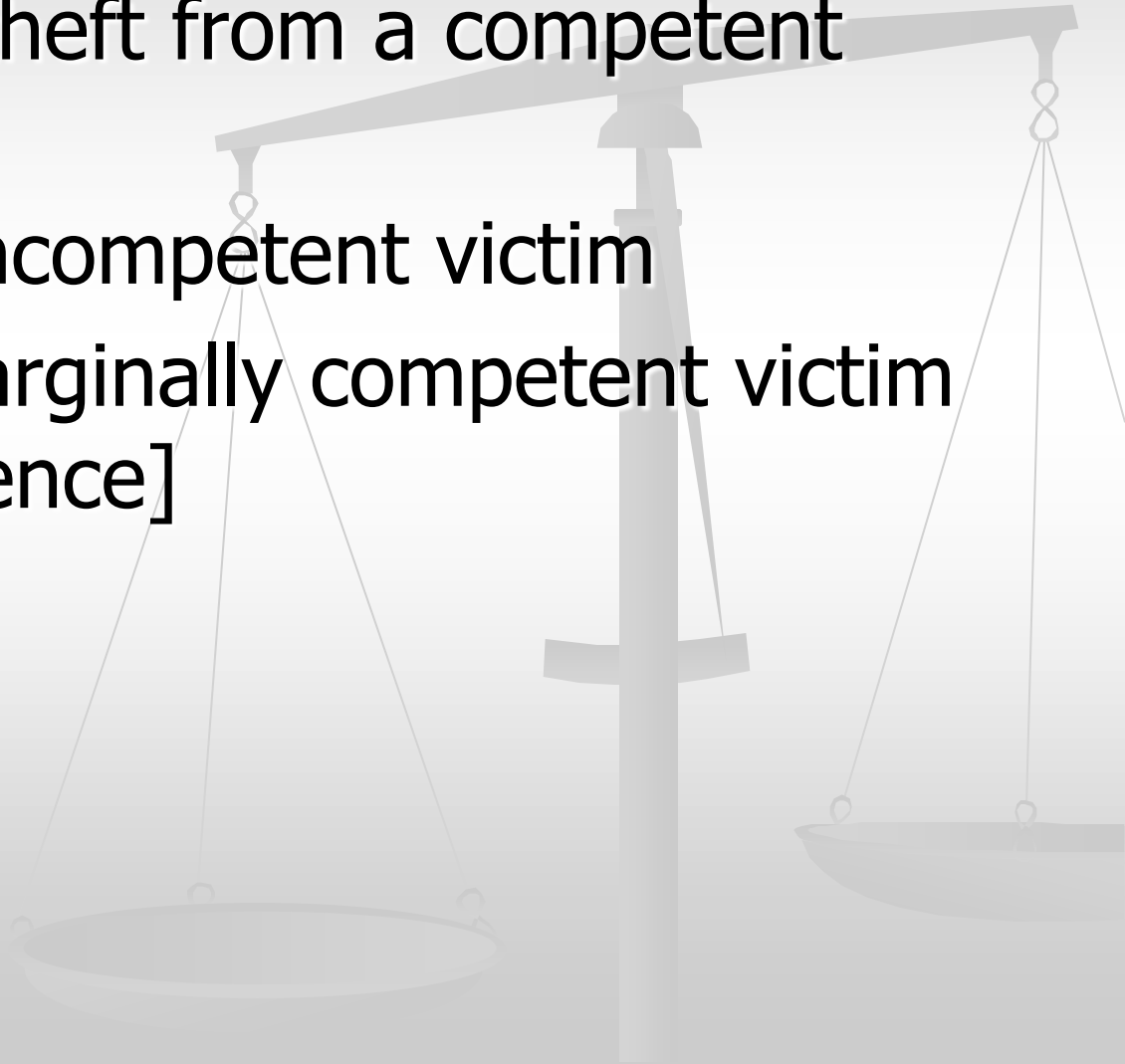
Caveats

- Not Retroactive (Avoids Ex Post Facto)
- Affects crimes occurring after effective date only (particularly 21 O.S. 843.4)
- Statute of Limitations has been extended to five years from discovery



Three prosecutable scenarios

- Classic case of theft from a competent victim
- Theft from an incompetent victim
- Theft from a marginally competent victim [by undue influence]



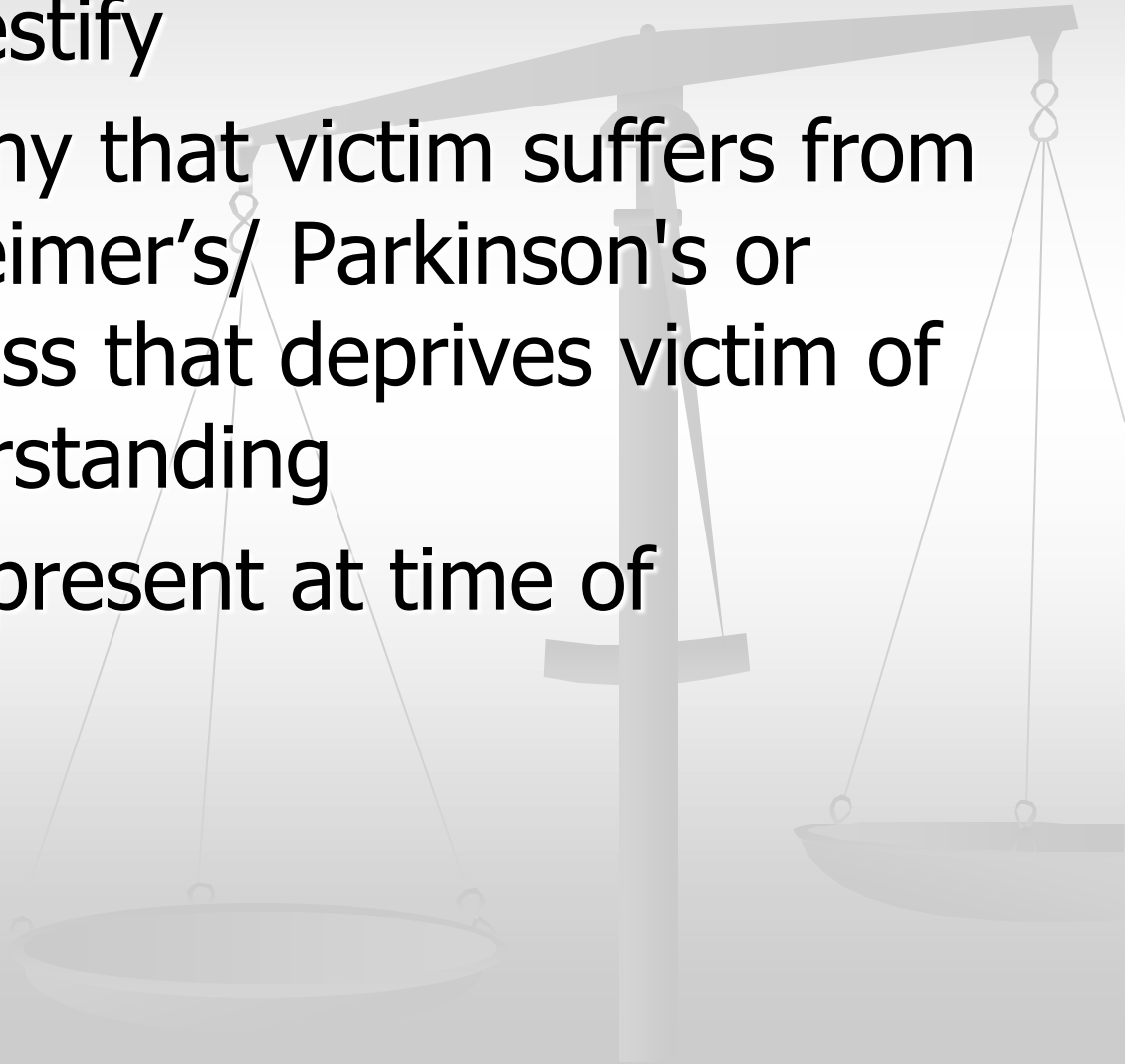
SCENARIO # 1

- Victim testifies
- Did not give permission
- Did not owe monies to suspect
- Victim is credible



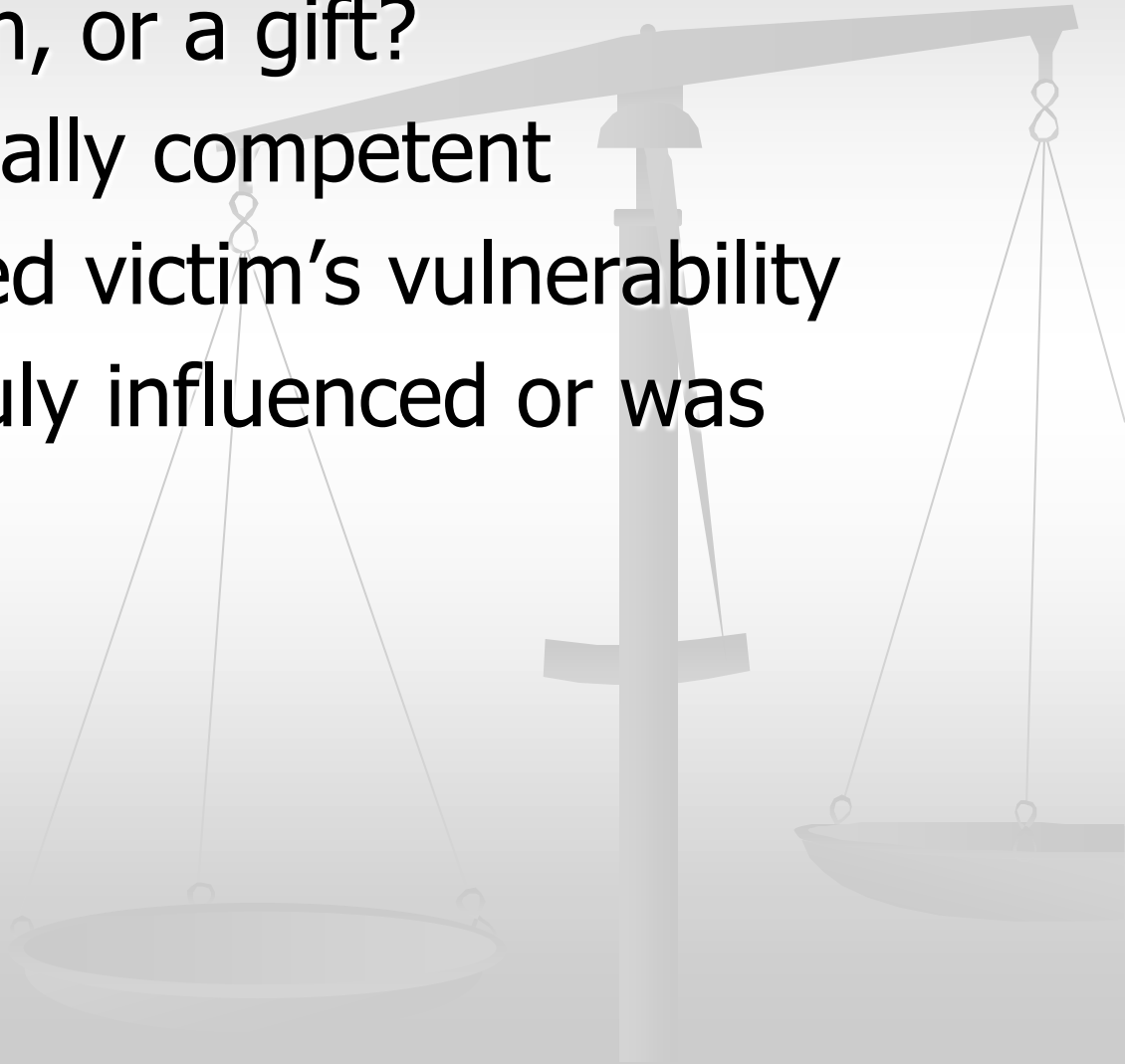
SCENARIO # 2

- Victim cannot testify
- Medical testimony that victim suffers from dementia/ Alzheimer's/ Parkinson's or some other illness that deprives victim of necessary understanding
- Incapacity was present at time of transaction



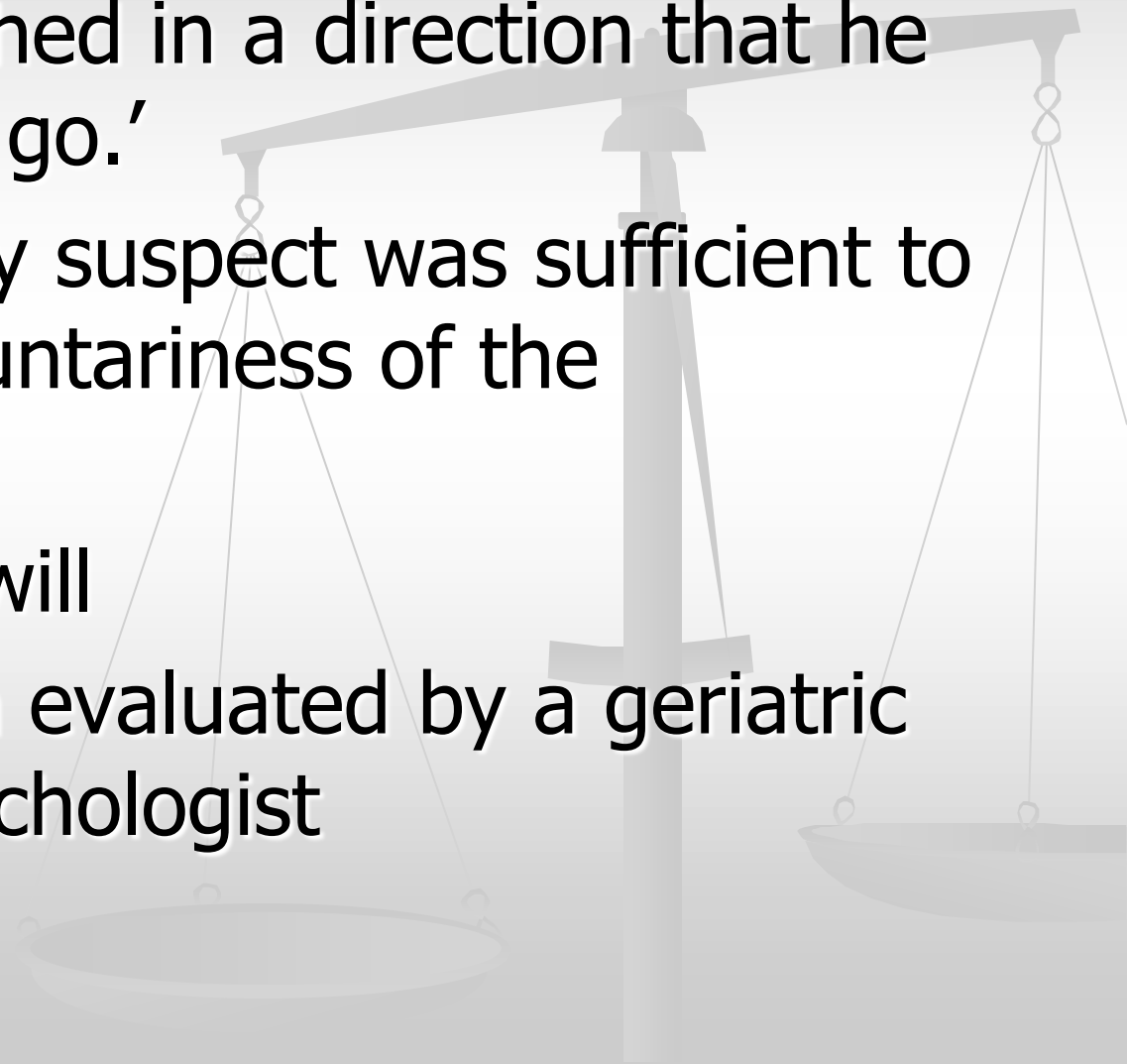
SCENARIO # 3

- Is it theft, a loan, or a gift?
- Victim is marginally competent
- Suspect exploited victim's vulnerability
- Victim was unduly influenced or was defrauded



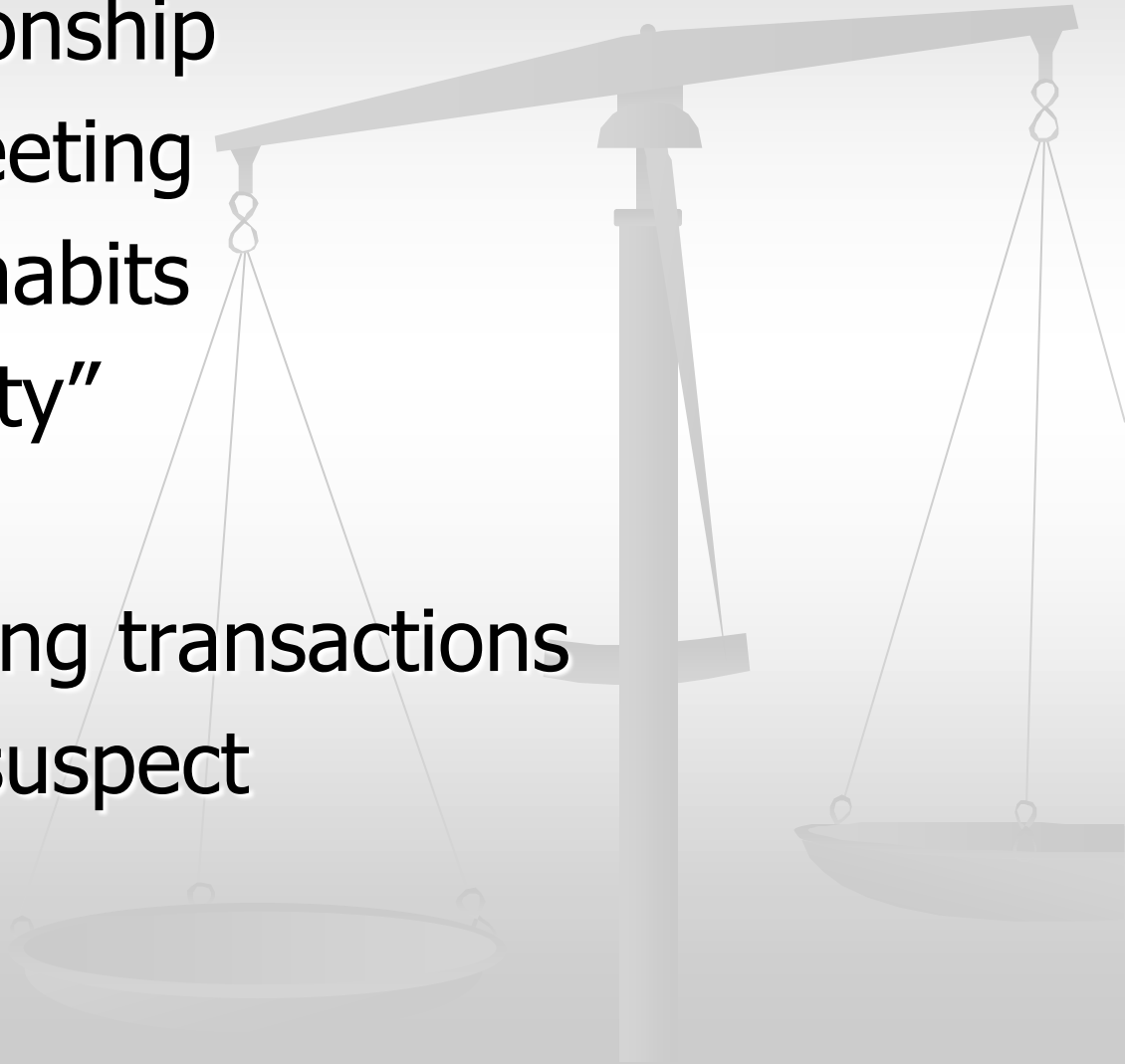
Undue Influence

- Victim 'was pushed in a direction that he did not want to go.'
- The influence by suspect was sufficient to remove the voluntariness of the transaction
- No longer free will
- Victim has been evaluated by a geriatric psychiatrist/psychologist



How to prove undue influence?

- Length of relationship
- Place of first meeting
- Prior spending habits
- Prior “charitability”
- What is left?
- Multiple escalating transactions
- Statements by suspect



Seniors and the court process:


- Getting them to court
- Bringing the court to them
- Waiting at court
- Testifying in court
- After court - to prevent further victimization



Assess the impact of the crime

- Financial
- Emotional
- Residual





EXAMPLES OF CASES PROSECUTED



- Rebecca Lynn Boehler CF 02-2108
- After preliminary hearing was charged in 18 counts of Exploitation of an elderly person **VICTIM WAS A RETIRED JUDGE.** Defendant was hired as a caretaker for Judge W. as his health began to fail. Defendant is currently in prison serving a split sentence. She made unauthorized ATM cash withdrawals from Judge W's account, stole checks from the Judge, took one of his credit cards and used it and even went so far as to apply for 4 other credit cards in his name without his knowledge or consent. Losses were initially estimated at approximately \$70,000



- Sherry Wyant CF 03-5363
- After a bench trial before Judge Bass she was found guilty (on only one of the counts) of attempting to exploit a 93 year old woman by trying to withdraw \$248,000 from her patient's bank account in one day!!! This bench trial went on for two days. She was sentenced to the max on the attempt (five years in prison)



- Janet Kay Smith CF 05-5174
- Defendant entered a plea of guilty for having taken advantage of an elderly woman who was a resident of a local assisted living facility where defendant worked. She began calling the victim "MOM." The crime was not discovered until after the victim died. However, through the work of the Edmond PD the Okla. County DA's office filed charges. Defendant pled guilty was placed on a five year suspended sentence with 10 weekends in jail and paid the family back \$30,000 up front.



- Wendel Brasher CF 03-5121
- Many counts were filed against defendant for exploiting his own legally blind elderly mother. He forged many of her checks to pay for his personal interests after having moved back in with his mother who needed help with paying her bills and running errands due to her macular degeneration. He entered a blind plea and was sentenced to ten years in prison followed by ten years of probation and restitution was ordered.

For more information:

- Oklahoma Office of the
State Long-Term Care Ombudsman
Aging Services Division – OKDHS
2401 NW 23rd Street, Suite 40
Oklahoma City, OK 73107
405-521-6734
Esther Houser, State LTC Ombudsman
William Whited, Deputy State Ombudsman

