

DEPARTMENT OF JUSTICE

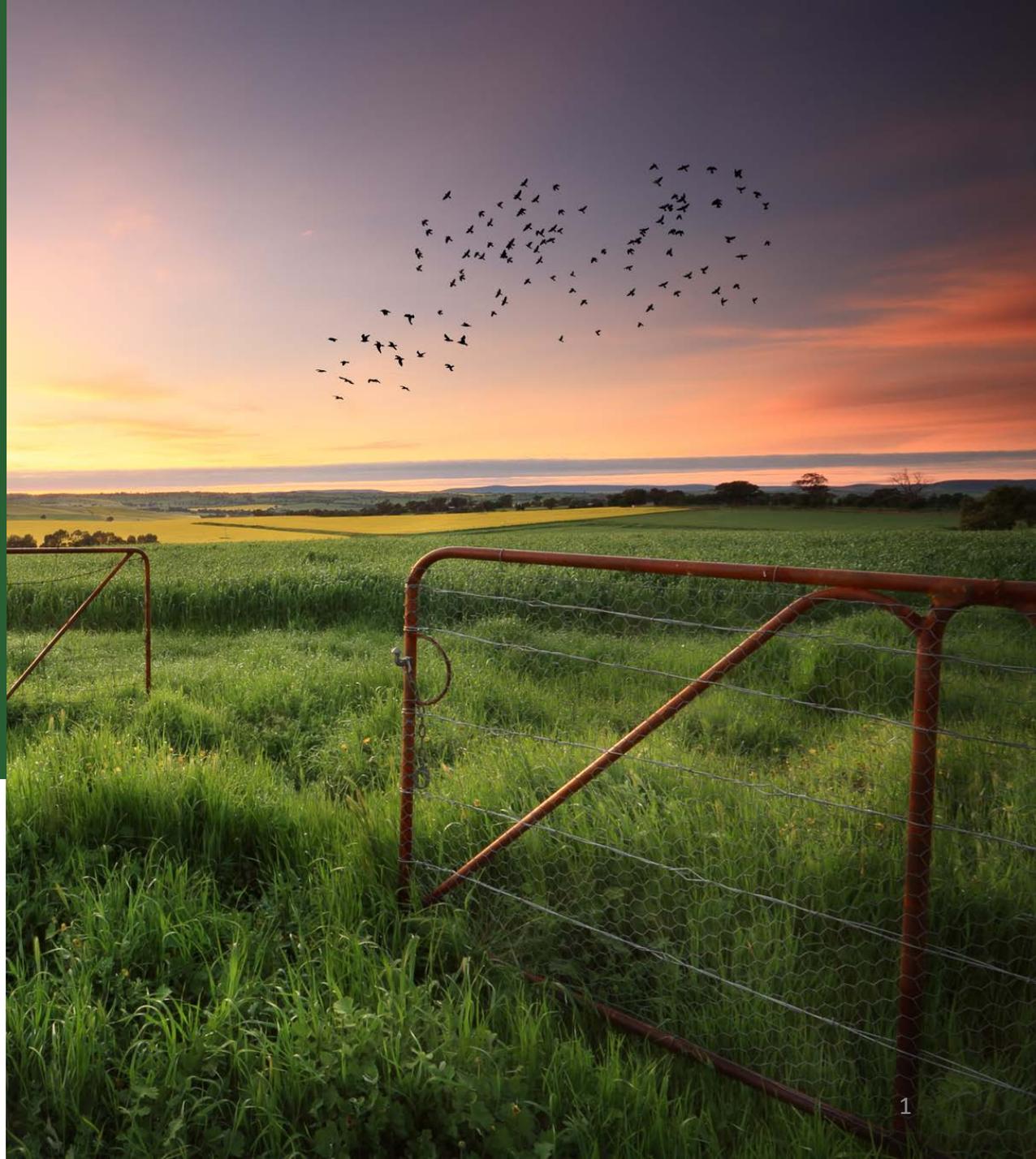
ElderJustice INITIATIVE



Rural and Tribal Elder Justice
Webinar Series

Increasing Access to Capacity Assessments via New Technologies

OCTOBER 26, 2018



TECHNICAL OVERVIEW

- ▶ If you are experiencing any technical issues with the audio for this session, please let us know in the feedback box.
- ▶ If you have technical difficulties during the webinar, contact Paula Larkin, who is providing technical support for this webinar. Her email address is paula.larkin@icf.com.
- ▶ Today's session will be recorded and made available on the training website.
- ▶ If you have questions, type them in the feedback box. We will address as many as possible throughout the webinar.
- ▶ The views expressed on this webinar are the opinions of the presenters, and do not necessarily express the views of DOJ.

ELDER JUSTICE INITIATIVE

The **mission** is to support and coordinate the Department of Justice's enforcement and programmatic efforts to combat elder abuse, neglect, and financial fraud and scams that target older adults.

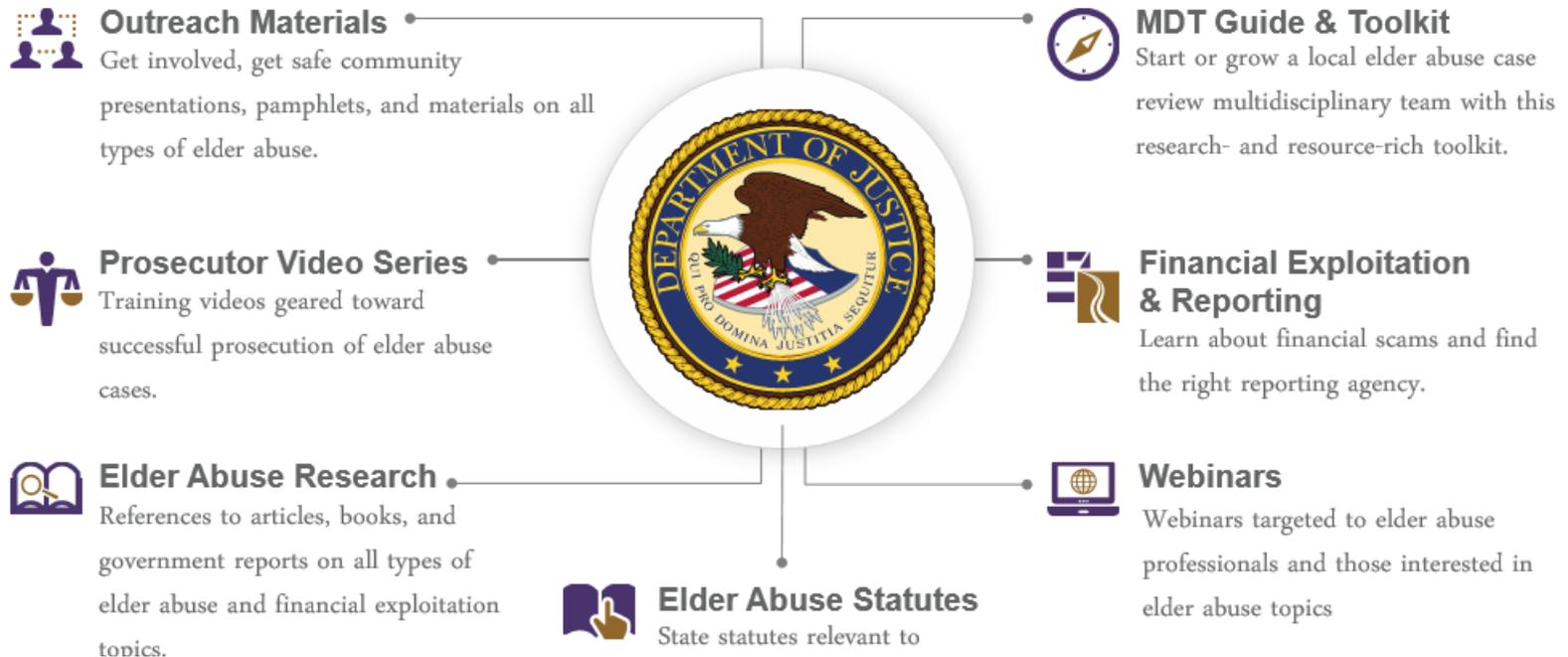
The Initiative does so by—

- Promoting justice for older adults.
- Helping older victims and their families.
- Enhancing state and local efforts through training and resources.
- Supporting research to improve elder abuse policy and practice.

ELDERJUSTICE.GOV

You're fighting elder abuse on the front lines. We've got your back.

The mission of the Elder Justice Initiative is to support and coordinate the Department's enforcement and programmatic efforts to combat elder abuse, neglect, and financial fraud and scams that target our Nation's seniors.



PRESENTERS



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VIDEO-PHONE CONFERENCING IN LONG-DISTANCE CAPACITY EVALUATIONS

John M. Halphen, J.D., M.D.

Associate Professor

THE PROBLEM

- APS clients often have diminished physical and mental health necessitating timely assessments and protection plans to minimize harm.
- Assessments may be delayed for a variety of reasons, including a scarcity of available evaluators, especially in remote locations.
- Solutions are needed to overcome these challenges and meet the needs of APS clients.

TELECOMMUNICATION-FACILITATED LONG-DISTANCE CAPACITY ASSESSMENT ALLOWED IN TEXAS

- In Texas, mental health assessments are allowed via telecommunication or information technology without a prior in-person encounter with the patient so long as it is conducted in the same manner as in-person evaluations.
(TAC Title 22, Part 9, Chapter 174, subchapter B)

- Capacity assessments are mental health assessments

REAL-TIME AUDIOVISUAL INTERACTIVE CONFERENCING VS. IN-PERSON EVALUATIONS IN MENTAL HEALTH AND COGNITIVE ASSESSMENTS

- Patient satisfaction, cost-effectiveness, and results comparable to in-person evaluation in the mental health context. (Hubley S, Lynch SB, 2016)
- Assessments of dementia have been found to be sensitive, specific, and as accurate as in-person assessments. (Loh PP, Maher S 2005)(Shores MM, Dyan-Dykes P 2004)
- Cognitive screening has been found to be feasible and reliable. (Cullum CM, Hynan LS 2014)(Wadsworth HE, Dhima K 2017)(Cullum CM, Weiner MF 2006)
- A metanalysis noted that testing of cognition obtained the same results when the testing required verbal responses, but significant differences arose when motor responses such as clock drawing were required and there was no facilitator with the patient. It was suggested that the difference was overcome in other studies where a facilitator was present with the patient. (Brearly TW, Shura RD 2017)

WEB-BASED PORTAL AND FACETIME FOR LONG DISTANCE CAPACITY ASSESSMENT

- A web-based portal was created to communicate, exchange, and store information on cases.
- Texas APS has iPhones and iPads, so FaceTime is used for real time audiovisual interactive conferencing.

IS FACETIME SECURE?

FaceTime is encrypted on both ends, and the actual video-phone encounter is not recorded.

FACETIME VS. IN-PERSON SIMILARITIES AND DIFFERENCES

- Same evaluation process.
- Observation of evidence of abuse, neglect, distress, grooming, and cleanliness is equally possible with in-person and FaceTime evaluation facilitated by the APS case worker.
- A more detailed medical exam and the diagnosis of medical conditions is possible if the evaluations is in person.
- Referral is made in either case for further evaluation with a local clinician when a medical problem is suspected—labs, x-rays, follow up.
- With both in-person and FaceTime evaluations, we do not assume the medical or mental health care of the client/patient.

CAPACITY ASSESSMENT (IN-PERSON OR FACETIME): SETTING UP

- Scheduled through the portal.
- Screening tools uploaded for use by the APS specialist in facilitating the FaceTime evaluation.
- Documentation shared with the physician by uploads in the portal.
- APS specialist is in the home/presence of the client.
- The physician joins the APS specialist and the client/patient for the assessment using FaceTime or is there in person.

CAPACITY ASSESSMENT (IN-PERSON OR FACETIME): OBTAINING CLIENT ASSENT/CONSENT

- The physician informs the client/patient that they are gathering information for a report to APS, and that APS may share this report with another agency or a court.
- If the client refuses, the assessment does not take place.

Capacity

PRESUMPTION OF CAPACITY TO MAKE DECISIONS AND SELF-CARE

- Autonomy for all adults, within the limits of the law, is an important and respected value in this country.
- Adults are presumed to have the ability and right to make decisions about themselves and take care of themselves.
- They are presumed to have these abilities and rights even in very advanced age or when there are mental problems.

CONTRACTUAL CAPACITY

- The client must be able to “understand the nature and effect of the act and the business being transacted.”

(APA/ABA 2008 quoting Walsh et al. 1994; Mezzullo et al., 2002)

- There may be mental capacity for a simpler transaction when there is not for a more complex one. (Wald M H, Texas Bar

Journal, Dec. 2014)

THE CAPACITY TO LIVE INDEPENDENTLY

To have the capacity to live independently, the adult should be able to arrange for their needs for adequate food, clothing, shelter, care of the person's own physical health, and the management of the person's own financial affairs.

To do this, they will need to have the:

- Ability to make decisions about these needs.
- Ability to carry out decisions about these needs.

(Texas Estates Code, Sec. 1002.017; Cooney et al. 2004; Naik, Lai et al. 2008)

THE ABILITY TO MAKE DECISIONS

- Can appreciate the situation and the consequences.
- Can understand the relevant information.
- Can evaluate their options based upon their own values.
- Can communicate a choice.

(Appelbaum PS. Clinical practice. Assessment of patients' competence to consent to treatment. N Engl J Med 2007;357:1834.)

APPRECIATION OF CIRCUMSTANCES AND OPTIONS – A KEY FACTOR

- Cognitive impairment, such as dementia, brain injury, or mental retardation (now called intellectual disability), may cause forgetfulness, lack of appreciation of circumstance, risks, and options.
- Psychotic delusions may impair appreciation of the situation.

ABILITY TO TAKE REASONABLE STEPS UNDER THE CIRCUMSTANCES TO CARRY OUT INTENTIONS – A KEY FACTOR

Cognitive impairment, such as poor executive function—mental illness, dementia, brain injury, delirium—may impair the ability of a person to take reasonable steps in light of their resources or knowledge of resources.

Coercion or undue influence—when the will of the person is being overcome inappropriately by the will of another.

(Naik AD, Lai JM, Kunik ME, et al. Assessing capacity in suspected cases of self-neglect. *Geriatrics*. 2008;63(2):24-31.)

CASE

- 81 y/o retired electrical engineer, widowed, living alone, daughter living in another city says that he has had memory problems for years.
- History of being scammed out of a lot of money.
- He did have substantial funds, but now Social Security is all he has.
- Per his daughter, he continues to be called by and talk to persons trying to scam him.
- A man now has papers the client signed conveying his home, and he wants the client to move out.

VISIT

- Open ended questions.
- He denied medical problems.
- Asked about medications, he retrieved the box with his bottles in them. He was consistently taking meds for dementia, Parkinson's, heart disease, and stroke prevention.
- The house and his person were clean and neat.

VISIT

- He answered questions generally and without much detail—he did not volunteer information.
- Asked specifically about scams, he recalled an episode in the past but said that he is careful now.
- Asked about who owns the house, he said that he did.
- Asked if he had sold it, he said no, but had borrowed money on it to get the roof fixed.

COGNITIVE SCREENING

- SLUMS, Clox, GDS, and Trail Making B were administered.
- He screened in the dementia range on the SLUMS. Orientation OK, poor calculation, he recalled 2 out of 5 of the objects to remember. He did well with reciting digits backwards. He recalled half of the facts in the short story. He had trouble recalling the instructions on the clock. He did well on Trail Making B.
- There was no indication of delirium.

FUNCTIONAL ABILITY

- Food – he was arranging for this
- Clothes – he was arranging for this
- Shelter – he was putting this in jeopardy, needs supervision
- Health – he was lacking in appreciation of his situation, needs supervision
- Finances – he was lacking in appreciation, needs supervision

BENEFITS OF USING FACETIME AND THE WEB-PORTAL

- The web-portal enhances communication with APS and provides organization of client information.
- More in-home evaluations are made possible, especially in remote areas.
- Evaluator time is used more efficiently.
- Client evaluations can take place more quickly and with less expense.

PRIOR TO VOCA FUNDING

- Possible capacity cases were discussed in a very large meeting (Curtailing Abuse Related to the Elderly – CARE).
- No referral sources to provide capacity assessment
- Assessments were completed by primary care physicians
- If not completed cases would close

FEDERAL LEGISLATION

- Enacted as part of the **Patient Protection and Affordable Care Act (PPACA)** on March 23, 2010, the **Elder Justice Act (EJA)** was the first piece of federal legislation passed to authorize a specific source of federal funds to address elder abuse, neglect, and exploitation.
 - The Act authorizes \$100 million in the first federal funding provided for state and local Adult Protective Services (APS) programs. Additionally, \$25 million was authorized for APS demonstration programs.
- On October 18, 2017, the President signed into law **the Elder Abuse Prevention and Prosecution Act**. Its purpose is to increase the Federal Government's focus on preventing elder abuse and exploitation.
- **Victims of Crime Act (VOCA)** provides formula grants to the states for crime victim programs.

DIRECT RESULT OF VOCA FUNDING

- Created our own (Multidisciplinary Team)
 - Team has approximately 25 core members from multiple agencies, including physicians, neuropsychologists, APS, DA's office, law enforcement, mental health, county counsel, and Legal Aid.
- Added two geriatricians to perform home visits and medical record review
 - Educate upcoming physicians who are interested in geriatric medicine.
- Increased the number of patients seen in the county referred by APS, law enforcement, and other county agencies.

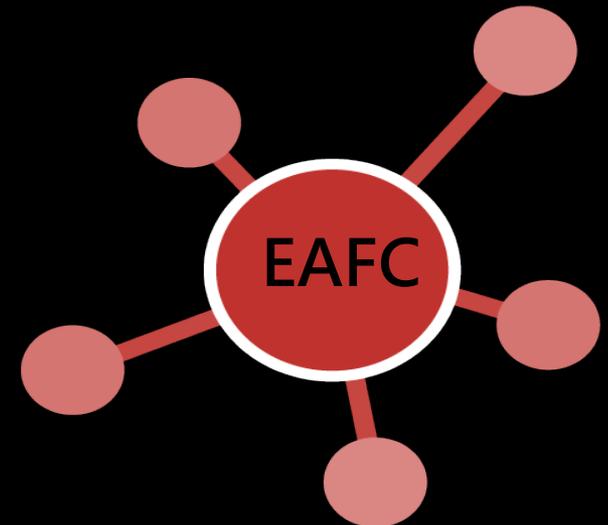
CORE MEMBERS OF THE EAFC

- EAFC Coordinator
- Neuropsychologists
- Deputy District Attorney
- Law Enforcement
- Adult Protective Services (Regional Managers)
- County Counsel
- Ombudsman
- CARE Representative
- Legal Aid
- Victim Services Advocate
- Public Guardians Office
- Geriatrician
- Behavioral Health
- ETS
- Coroners Office



WHAT IS THE ELDER ABUSE FORENSIC CENTER?

- The Elder Abuse Forensic Center (EAFC) strives to improve our community's ability to **combat, investigate, and prosecute** elder and dependent adult abuse.
- The EAFC Team collaborates and determines coordinated response plans to improve case outcomes.



GOALS OF THE EAFC

- Reduce fragmentation and improve communication/problem solving related to preventing and addressing elder/dependent adult abuse, neglect, and exploitation.
- Raise public awareness about the multidimensional nature of and challenges associated with elder/dependent adult abuse, neglect, and exploitation.
- Educate and improve the competency of service professionals working with the elder/dependent adult population.
- Develop and advance practices in the field of elder and dependent adult protective services through the development of standardized tools and innovative research.

ELEMENTS OF AN EAFC CASE

- Medical, social, legal, and financial complexity that necessitates involvement and services provided by an array of disciplines to ensure client safety.
- High-risk self-neglect case where capacity is compromised.
- Identified suspected abuser.
- Law enforcement/DA interested in pursuing prosecution.



EAFC MDT

- **Who:** EAFC core members, ad hoc member agencies, and individuals associated with the case/investigation are invited to participate in the meeting.
- EAFC meetings include brief introductions, a maximum of four scheduled case presentations (20 minutes each), and the development of a Coordinated Response Plan.

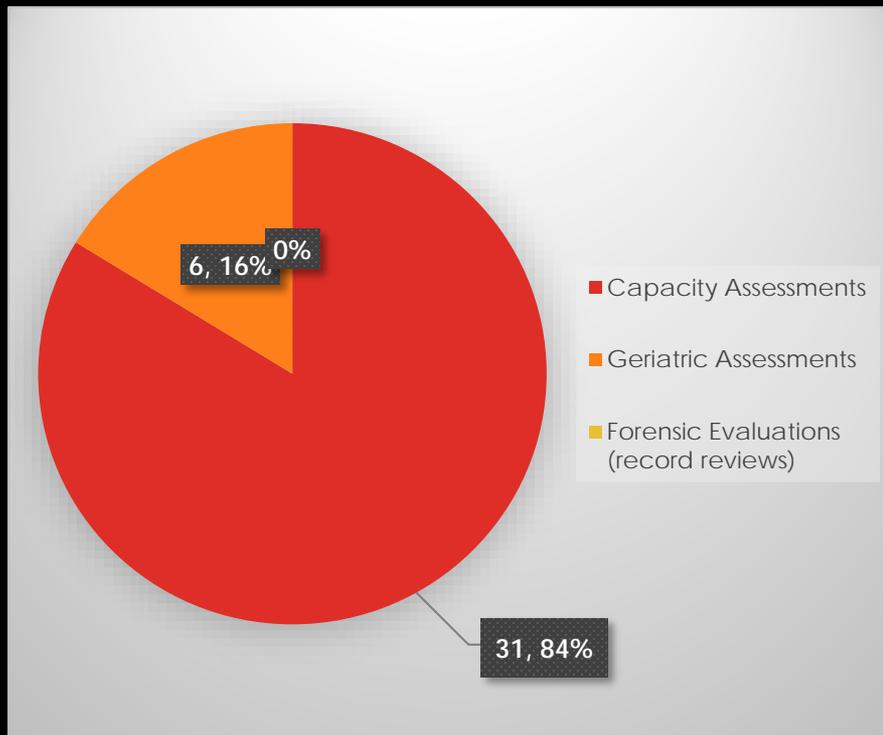
WHAT DOES IT TAKE?

- TIME
- COMMITMENT
- TEAM MINDED
- FLEXIBILITY
- PASSION

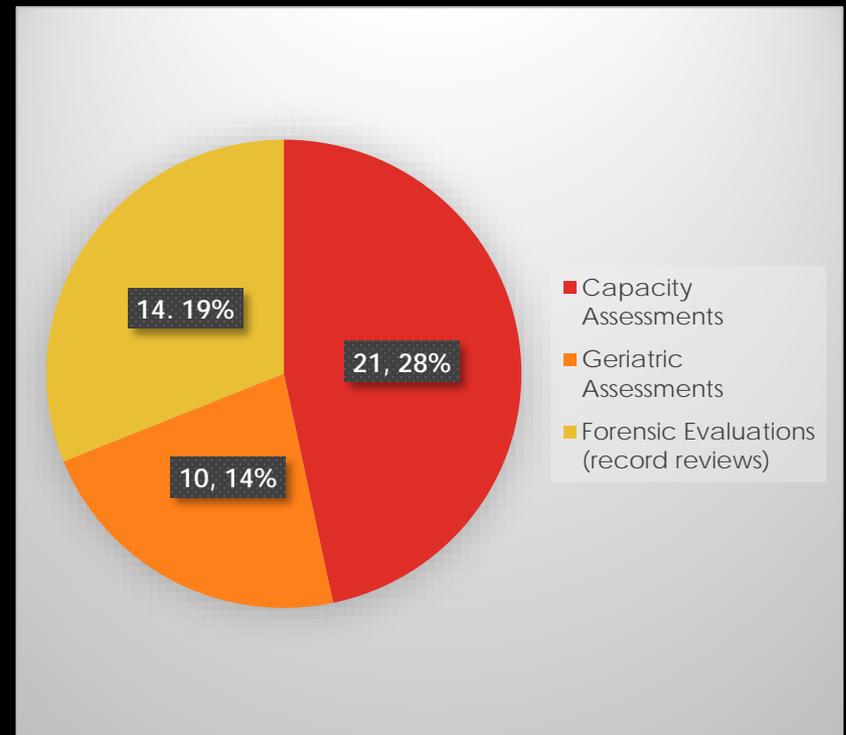


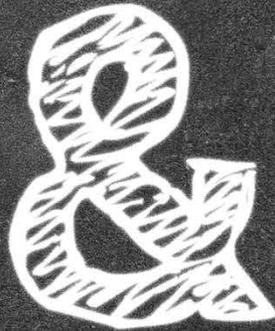
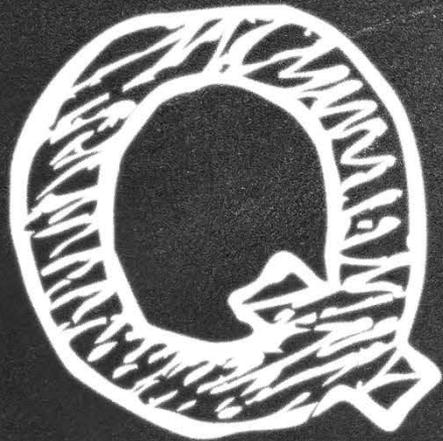
STATISTICS

January–December of 2016
(46 Cases; 37 EAFC Consults)



January–December of 2017 (80 Cases; 73 EAFC Consults)





Questions

Elder Justice Initiative

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www.elderjustice.gov