

## LEGAL STATEMENT: “WILLFULLY AND KNOWINGLY” COMMITTING A CRIME – ELEMENTS OF PROOF AND PROBABLE CAUSE

Under Virginia law, a person acts “willfully and knowingly” when they commit an act voluntarily, intentionally, with full awareness of its nature and probable consequences.

The phrase distinguishes deliberate criminal conduct from acts done accidentally, negligently, or under mistake.

### I. Definitions

**Willfully** – A deliberate, intentional act performed with a bad purpose, or with reckless disregard of the law or another’s rights.

**Knowingly** – Acting with awareness of the facts that make the conduct criminal.

Knowledge may be proved through direct evidence or circumstantial facts showing the defendant understood the nature of their actions.

Together, “willfully and knowingly” requires proof that the accused was aware of what they were doing, aware that it was wrongful or unlawful, and chose to proceed anyway.

## II. Elements of Proof to Establish Probable Cause

To seek criminal prosecution, law enforcement or a prosecutor must establish probable cause—a reasonable belief, based on factual evidence, that:

A crime has been committed; and

The accused committed it willfully and knowingly.

Probable cause does not require proof beyond a reasonable doubt. It requires credible facts or circumstances that would lead a prudent person to believe the suspect intentionally engaged in unlawful acts.

Evidence of willful and knowing conduct may include:

Statements or admissions showing awareness or intent;

Repeated conduct despite warnings or legal duties;

Documentation or concealment suggesting deliberate wrongdoing;

Expert testimony confirming the defendant's knowledge of harm or breach of duty;

Omissions or neglect that no reasonable fiduciary or caregiver would allow, especially if the result was foreseeable harm.

### III. Application to Financial Exploitation and Elder Abuse

Where fiduciaries or family members intentionally deprive an elder of necessary medical or dental care, conceal financial exploitation, or act in reckless disregard of a duty of care, these actions may constitute willful and knowing violations of Virginia Code §§ 18.2-369 (Abuse and Neglect of Incapacitated Adults) and § 18.2-178 (Obtaining Money by False Pretenses).

If evidence shows a deliberate pattern of concealment, deprivation, or exploitation, probable cause can be established for criminal prosecution