

S. 178

One Hundred Fifteenth Congress of the United States of America

AT THE FIRST SESSION

*Begun and held at the City of Washington on Tuesday,
the third day of January, two thousand and seventeen*

An Act

To prevent elder abuse and exploitation and improve the justice system's response to victims in elder abuse and exploitation cases.

*Be it enacted by the Senate and House of Representatives of
the United States of America in Congress assembled,*

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the “Elder Abuse Prevention and Prosecution Act”.

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

Sec. 1. Short title; table of contents.
Sec. 2. Definitions.

TITLE I—SUPPORTING FEDERAL CASES INVOLVING ELDER JUSTICE

Sec. 101. Supporting Federal cases involving elder justice.

TITLE II—IMPROVED DATA COLLECTION AND FEDERAL COORDINATION

Sec. 201. Establishment of best practices for local, State, and Federal data collection.

Sec. 202. Effective interagency coordination and Federal data collection.

TITLE III—ENHANCED VICTIM ASSISTANCE TO ELDER ABUSE SURVIVORS

Sec. 301. Sense of the Senate.

Sec. 302. Report.

TITLE IV—ROBERT MATAVA ELDER ABUSE PROSECUTION ACT OF 2017

Sec. 401. Short title.

Sec. 402. Enhanced penalty for telemarketing and email marketing fraud directed at elders.

Sec. 403. Training and technical assistance for States.

Sec. 404. Interstate initiatives.

TITLE V—MISCELLANEOUS

Sec. 501. Court-appointed guardianship oversight activities under the Elder Justice Act of 2009.

Sec. 502. GAO reports.

Sec. 503. Outreach to State and local law enforcement agencies.

Sec. 504. Model power of attorney legislation.

Sec. 505. Best practices and model legislation for guardianship proceedings.

SEC. 2. DEFINITIONS.

In this Act—

(1) the terms “abuse”, “adult protective services”, “elder”, “elder justice”, “exploitation”, “law enforcement”, and “neglect” have the meanings given those terms in section 2011 of the Social Security Act (42 U.S.C. 1397j);

(2) the term “elder abuse” includes abuse, neglect, and exploitation of an elder; and

(3) the term “State” means each of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any other territory or possession of the United States.

TITLE I—SUPPORTING FEDERAL CASES INVOLVING ELDER JUSTICE

SEC. 101. SUPPORTING FEDERAL CASES INVOLVING ELDER JUSTICE.

(a) SUPPORT AND ASSISTANCE.—

(1) **ELDER JUSTICE COORDINATORS.**—The Attorney General shall designate in each Federal judicial district not less than one Assistant United States Attorney to serve as the Elder Justice Coordinator for the district, who, in addition to any other responsibilities, shall be responsible for—

(A) serving as the legal counsel for the Federal judicial district on matters relating to elder abuse;

(B) prosecuting, or assisting in the prosecution of, elder abuse cases;

(C) conducting public outreach and awareness activities relating to elder abuse; and

(D) ensuring the collection of data required to be collected under section 202.

(2) **INVESTIGATIVE SUPPORT.**—The Attorney General, in consultation with the Director of the Federal Bureau of Investigation, shall, with respect to crimes relating to elder abuse, ensure the implementation of a regular and comprehensive training program to train agents of the Federal Bureau of Investigation in the investigation and prosecution of such crimes and the enforcement of laws related to elder abuse, which shall include—

(A) specialized strategies for communicating with and assisting elder abuse victims; and

(B) relevant forensic training relating to elder abuse.

(3) **RESOURCE GROUP.**—The Attorney General, through the Executive Office for United States Attorneys, shall ensure the operation of a resource group to facilitate the sharing of knowledge, experience, sample pleadings and other case documents, training materials, and any other resources to assist prosecutors throughout the United States in pursuing cases relating to elder abuse.

(4) **DESIGNATED ELDER JUSTICE WORKING GROUP OR SUBCOMMITTEE TO THE ATTORNEY GENERAL’S ADVISORY COMMITTEE OF UNITED STATES ATTORNEYS.**—Not later than 60 days after the date of enactment of this Act, the Attorney General, in consultation with the Director of the Executive Office for United States Attorneys, shall establish a subcommittee or working group to the Attorney General’s Advisory Committee of United States Attorneys, as established under section 0.10 of title 28, Code of Federal Regulations, or any successor thereto, for the purposes of advising the Attorney General on policies of the Department of Justice relating to elder abuse.

(b) **DEPARTMENT OF JUSTICE ELDER JUSTICE COORDINATOR.**—Not later than 60 days after the date of enactment of this Act, the Attorney General shall designate an Elder Justice Coordinator

within the Department of Justice who, in addition to any other responsibilities, shall be responsible for—

(1) coordinating and supporting the law enforcement efforts and policy activities for the Department of Justice on elder justice issues;

(2) evaluating training models to determine best practices and creating or compiling and making publicly available replication guides and training materials for law enforcement officers, prosecutors, judges, emergency responders, individuals working in victim services, adult protective services, social services, and public safety, medical personnel, mental health personnel, financial services personnel, and any other individuals whose work may bring them in contact with elder abuse regarding how to—

(A) conduct investigations in elder abuse cases;

(B) address evidentiary issues and other legal issues;

and

(C) appropriately assess, respond to, and interact with victims and witnesses in elder abuse cases, including in administrative, civil, and criminal judicial proceedings; and

(3) carrying out such other duties as the Attorney General determines necessary in connection with enhancing the understanding, prevention, and detection of, and response to, elder abuse.

(c) FEDERAL TRADE COMMISSION.—

(1) FEDERAL TRADE COMMISSION ELDER JUSTICE COORDINATOR.—Not later than 60 days after the date of enactment of this Act, the Chairman of the Federal Trade Commission shall designate within the Bureau of Consumer Protection of the Federal Trade Commission an Elder Justice Coordinator who, in addition to any other responsibilities, shall be responsible for—

(A) coordinating and supporting the enforcement and consumer education efforts and policy activities of the Federal Trade Commission on elder justice issues; and

(B) serving as, or ensuring the availability of, a central point of contact for individuals, units of local government, States, and other Federal agencies on matters relating to the enforcement and consumer education efforts and policy activities of the Federal Trade Commission on elder justice issues.

(2) REPORTS TO CONGRESS.—Not later than 1 year after the date of enactment of this Act, and once every year thereafter, the Chairman of the Federal Trade Commission and the Attorney General shall each submit to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives a report detailing the enforcement actions taken by the Federal Trade Commission and the Department of Justice, respectively, over the preceding year in each case in which not less than one victim was an elder or that involved a financial scheme or scam that was either targeted directly toward or largely affected elders, including—

(A) the name of the district where the case originated;

(B) the style of the case, including the case name and number;

(C) a description of the scheme or scam; and

(D) the outcome of the case.

(d) **USE OF APPROPRIATED FUNDS.**—No additional funds are authorized to be appropriated to carry out this section.

TITLE II—IMPROVED DATA COLLECTION AND FEDERAL COORDINATION

SEC. 201. ESTABLISHMENT OF BEST PRACTICES FOR LOCAL, STATE, AND FEDERAL DATA COLLECTION.

(a) **IN GENERAL.**—The Attorney General, in consultation with Federal, State, and local law enforcement agencies, shall—

(1) establish best practices for data collection to focus on elder abuse; and

(2) provide technical assistance to State, local, and tribal governments in adopting the best practices established under paragraph (1).

(b) **DEADLINE.**—Not later than 1 year after the date of enactment of this Act, the Attorney General shall publish the best practices established under subsection (a)(1) on the website of the Department of Justice in a publicly accessible manner.

(c) **LIMITATION.**—Nothing in this section shall be construed to require or obligate compliance with the best practices established under subsection (a)(1).

SEC. 202. EFFECTIVE INTERAGENCY COORDINATION AND FEDERAL DATA COLLECTION.

(a) **IN GENERAL.**—The Attorney General, in consultation with the Secretary of Health and Human Services shall, on an annual basis—

(1) collect from Federal law enforcement agencies, other agencies as appropriate, and Federal prosecutors' offices statistical data related to elder abuse cases, including cases or investigations where one or more victims were elders, or the case or investigation involved a financial scheme or scam that was either targeted directly toward or largely affected elders; and

(2) publish on the website of the Department of Justice in a publicly accessible manner—

(A) a summary of the data collected under paragraph (1); and

(B) recommendations for collecting additional data relating to elder abuse, including recommendations for ways to improve data reporting across Federal, State, and local agencies.

(b) **REQUIREMENT.**—The data collected under subsection (a)(1) shall include—

(1) the total number of investigations initiated by Federal law enforcement agencies, other agencies as appropriate, and Federal prosecutors' offices related to elder abuse;

(2) the total number and types of elder abuse cases filed in Federal courts; and

(3) for each case described in paragraph (2)—

(A) the name of the district where the case originated;

(B) the style of the case, including the case name and number;

(C) a description of the act or acts giving rise to the elder abuse;

(D) in the case of a scheme or scam, a description of such scheme or scam giving rise to the elder abuse;

(E) information about each alleged perpetrator of the elder abuse; and

(F) the outcome of the case.

(c) HHS REQUIREMENT.—The Secretary of Health and Human Services shall, on an annual basis, provide to the Attorney General statistical data collected by the Secretary relating to elder abuse cases investigated by adult protective services, which shall be included in the summary published under subsection (a)(2).

(d) PROHIBITION ON INDIVIDUAL DATA.—None of the information reported under this section shall include specific individually identifiable data.

TITLE III—ENHANCED VICTIM ASSISTANCE TO ELDER ABUSE SURVIVORS

SEC. 301. SENSE OF THE SENATE.

(a) FINDINGS.—The Senate finds the following:

(1) The vast majority of cases of abuse, neglect, and exploitation of older adults in the United States go unidentified and unreported.

(2) Not less than \$2,900,000,000 is taken from older adults each year due to financial abuse and exploitation.

(3) Elder abuse, neglect, and exploitation have no boundaries and cross all racial, social, class, gender, and geographic lines.

(4) Older adults who are abused are 3 times more likely to die earlier than older adults of the same age who are not abused.

(5) Up to half of all older adults with dementia will experience abuse.

(b) SENSE OF THE SENATE.—It is the sense of the Senate that—

(1) elder abuse involves the exploitation of potentially vulnerable individuals with devastating physical, mental, emotional, and financial consequences to the victims and their loved ones;

(2) to combat this affront to America's older adults, we must do everything possible to both support victims of elder abuse and prevent the abuse from occurring in the first place; and

(3) the Senate supports a multipronged approach to prevent elder abuse and exploitation, protect the victims of elder abuse and exploitation from further harm, and bring the perpetrators of such crimes to justice.

SEC. 302. REPORT.

(a) IN GENERAL.—Not later than 1 year after the date on which the collection of statistical data under section 202(a)(1) begins and once each year thereafter, the Director of the Office for Victims of Crime shall submit a report to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives that addresses, to the extent data are available, the nature, extent, and amount of funding under the Victims of Crime Act of 1984 (42 U.S.C. 10601 et seq.) for victims of crime who are elders.

(b) CONTENTS.—The report required under subsection (a) shall include—

(1) an analysis of victims’ assistance, victims’ compensation, and discretionary grants under which elder abuse victims (including elder victims of financial abuse, financial exploitation, and fraud) received assistance; and

(2) recommendations for improving services for victims of elder abuse.

TITLE IV—ROBERT MATAVA ELDER ABUSE PROSECUTION ACT OF 2017

SEC. 401. SHORT TITLE.

This title may be cited as the “Robert Matava Elder Abuse Prosecution Act of 2017”.

SEC. 402. ENHANCED PENALTY FOR TELEMARKETING AND EMAIL MARKETING FRAUD DIRECTED AT ELDERS.

(a) IN GENERAL.—Chapter 113A of title 18, United States Code, is amended—

(1) in the chapter heading, by inserting “**AND EMAIL MARKETING**” after “**TELEMARKETING**”;

(2) by striking section 2325 and inserting the following:

“§ 2325. Definition

“In this chapter, the term ‘telemarketing or email marketing’—

“(1) means a plan, program, promotion, or campaign that is conducted to induce—

“(A) purchases of goods or services;

“(B) participation in a contest or sweepstakes;

“(C) a charitable contribution, donation, or gift of money or any other thing of value;

“(D) investment for financial profit;

“(E) participation in a business opportunity;

“(F) commitment to a loan; or

“(G) participation in a fraudulent medical study, research study, or pilot study,

by use of one or more interstate telephone calls, emails, text messages, or electronic instant messages initiated either by a person who is conducting the plan, program, promotion, or campaign or by a prospective purchaser or contest or sweepstakes participant or charitable contributor, donor, or investor; and

“(2) does not include the solicitation through the posting, publication, or mailing of a catalog or brochure that—

“(A) contains a written description or illustration of the goods, services, or other opportunities being offered;

“(B) includes the business address of the solicitor;

“(C) includes multiple pages of written material or illustration; and

“(D) has been issued not less frequently than once a year,

if the person making the solicitation does not solicit customers by telephone, email, text message, or electronic instant message, but only receives interstate telephone calls, emails, text messages, or electronic instant messages initiated by customers

in response to the written materials, whether in hard copy or digital format, and in response to those interstate telephone calls, emails, text messages, or electronic instant messages does not conduct further solicitation.”;

(3) in section 2326, in the matter preceding paragraph (1)—

(A) by striking “or 1344” and inserting “1344, or 1347 or section 1128B of the Social Security Act (42 U.S.C. 1320a–7b)”;

(B) by inserting “or email marketing” after “telemarketing”;

(4) by adding at the end the following:

“§ 2328. Mandatory forfeiture

“(a) IN GENERAL.—The court, in imposing sentence on a person who is convicted of any offense for which an enhanced penalty is provided under section 2326, shall order that the defendant forfeit to the United States—

“(1) any property, real or personal, constituting or traceable to gross proceeds obtained from such offense; and

“(2) any equipment, software, or other technology used or intended to be used to commit or to facilitate the commission of such offense.

“(b) PROCEDURES.—The procedures set forth in section 413 of the Controlled Substances Act (21 U.S.C. 853), other than subsection (d) of that section, and in Rule 32.2 of the Federal Rules of Criminal Procedure, shall apply to all stages of a criminal forfeiture proceeding under this section.”.

(b) TECHNICAL AND CONFORMING AMENDMENTS.—

(1) The table of chapters at the beginning of part I of title 18, United States Code, is amended by striking the item relating to chapter 113A and inserting the following:

“113A. Telemarketing and email marketing fraud 2325”.

(2) The table of sections for chapter 113A of title 18, United States Code, is amended by inserting after the item relating to section 2327 the following:

“2328. Mandatory forfeiture.”.

SEC. 403. TRAINING AND TECHNICAL ASSISTANCE FOR STATES.

The Attorney General, in consultation with the Secretary of Health and Human Services and in coordination with the Elder Justice Coordinating Council (established under section 2021 of the Social Security Act (42 U.S.C. 1397k)), shall create, compile, evaluate, and disseminate materials and information, and provide the necessary training and technical assistance, to assist States and units of local government in—

(1) investigating, prosecuting, pursuing, preventing, understanding, and mitigating the impact of—

(A) physical, sexual, and psychological abuse of elders;

(B) exploitation of elders, including financial abuse and scams targeting elders; and

(C) neglect of elders; and

(2) assessing, addressing, and mitigating the physical and psychological trauma to victims of elder abuse.

SEC. 404. INTERSTATE INITIATIVES.

(a) **INTERSTATE AGREEMENTS AND COMPACTS.**—The consent of Congress is given to any two or more States (acting through State agencies with jurisdiction over adult protective services) to enter into agreements or compacts for cooperative effort and mutual assistance—

- (1) in promoting the safety and well-being of elders; and
- (2) in enforcing their respective laws and policies to promote such safety and well-being.

(b) **RECOMMENDATIONS ON INTERSTATE COMMUNICATION.**—The Executive Director of the State Justice Institute, in consultation with State or local adult protective services, aging, social, and human services and law enforcement agencies, nationally recognized nonprofit associations with expertise in data sharing among criminal justice agencies and familiarity with the issues raised in elder abuse cases, and the Secretary of Health and Human Services, shall submit to Congress legislative proposals relating to the facilitation of interstate agreements and compacts.

TITLE V—MISCELLANEOUS

SEC. 501. COURT-APPOINTED GUARDIANSHIP OVERSIGHT ACTIVITIES UNDER THE ELDER JUSTICE ACT OF 2009.

Section 2042(c) of the Social Security Act (42 U.S.C. 1397m–1(c)) is amended—

- (1) in paragraph (1), by inserting “(and, in the case of demonstration programs described in paragraph (2)(E), to the highest courts of States)” after “States”;

- (2) in paragraph (2)—

- (A) in the matter preceding subparagraph (A), by inserting “(and the highest courts of States, in the case of demonstration programs described in subparagraph (E))” after “local units of government”;

- (B) in subparagraph (D), by striking “or” after the semicolon;

- (C) by redesignating subparagraph (E) as subparagraph (F); and

- (D) by inserting after subparagraph (D), the following new subparagraph:

- “(E) subject to paragraph (3), programs to assess the fairness, effectiveness, timeliness, safety, integrity, and accessibility of adult guardianship and conservatorship proceedings, including the appointment and the monitoring of the performance of court-appointed guardians and conservators, and to implement changes deemed necessary as a result of the assessments such as mandating background checks for all potential guardians and conservators, and implementing systems to enable the annual accountings and other required conservatorship and guardianship filings to be completed, filed, and reviewed electronically in order to simplify the filing process for conservators and guardians and better enable courts to identify discrepancies and detect fraud and the exploitation of protected persons; or”;

- (3) by redesignating paragraphs (3), (4), and (5) as paragraphs (4), (5), and (6), respectively;

(4) by inserting after paragraph (2), the following new paragraph:

“(3) REQUIREMENTS FOR COURT-APPOINTED GUARDIANSHIP OVERSIGHT DEMONSTRATION PROGRAMS.—

“(A) AWARD OF GRANTS.—In awarding grants to the highest courts of States for demonstration programs described in paragraph (2)(E), the Secretary shall consider the recommendations of the Attorney General and the State Justice Institute, as established by section 203 of the State Justice Institute Act of 1984 (42 U.S.C. 10702).

“(B) COLLABORATION.—The highest court of a State awarded a grant to conduct a demonstration program described in paragraph (2)(E) shall collaborate with the State Unit on Aging for the State and the Adult Protective Services agency for the State in conducting the demonstration program.”;

(5) in paragraph (4) (as redesignated by paragraph (3) of this section), by inserting “(and, in the case of demonstration programs described in paragraph (2)(E), the highest court of a State)” after “a State”; and

(6) in paragraph (5) (as so redesignated), by inserting “(or, in the case of demonstration programs described in paragraph (2)(E), the highest court of a State)” after “State” each place it appears.

SEC. 502. GAO REPORTS.

(a) ELDER JUSTICE RECOMMENDATIONS.—Not later than 18 months after the date of enactment of this Act, the Comptroller General of the United States shall review existing Federal programs and initiatives in the Federal criminal justice system relevant to elder justice and shall submit to Congress—

(1) a report on such programs and initiatives; and

(2) any recommendations the Comptroller General determines are appropriate to improve elder justice in the United States.

(b) REPORT ON ELDER ABUSE AND INTERNATIONAL CRIMINAL ENTERPRISES.—Not later than 18 months after the date of enactment of this Act, the Comptroller General of the United States shall submit to Congress a report on—

(1) Federal Government efforts to monitor—

(A) the exploitation of older adults of the United States in global drug trafficking schemes and other international criminal enterprises;

(B) the extent to which exploitation of older adults of the United States by international criminal enterprises has resulted in the incarceration of these citizens of the United States in foreign countries; and

(C) the total annual number of elder abuse cases pending in the United States; and

(2) the results of intervention by the United States with foreign officials on behalf of citizens of the United States who are elder abuse victims in international criminal enterprises.

SEC. 503. OUTREACH TO STATE AND LOCAL LAW ENFORCEMENT AGENCIES.

The Attorney General shall submit to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives a report on efforts by the Department

of Justice to conduct outreach to State and local law enforcement agencies on the process for collaborating with the Federal Government for the purpose of investigating and prosecuting interstate and international elder financial exploitation cases.

SEC. 504. MODEL POWER OF ATTORNEY LEGISLATION.

The Attorney General shall publish model power of attorney legislation for the purpose of preventing elder abuse.

SEC. 505. BEST PRACTICES AND MODEL LEGISLATION FOR GUARDIANSHIP PROCEEDINGS.

The Attorney General shall publish best practices for improving guardianship proceedings and model legislation relating to guardianship proceedings for the purpose of preventing elder abuse.

Speaker of the House of Representatives.

*Vice President of the United States and
President of the Senate.*