

1 **Purpose: In the nature of a substitute.**

2

3

4 **S. 3270**

5

6 **To prevent elder abuse and exploitation and improve the**
7 **justice system’s response to victims in elder abuse and**
8 **exploitation cases.**

9

10 **Referred to the Committee on _____ and ordered to be**
11 **printed**

12 **Ordered to lie on the table and to be printed**

13 **AMENDMENT IN THE NATURE OF A SUBSTITUTE INTENDED TO**
14 **BE PROPOSED BY _____**

15 **Viz:**

16 **Strike all after the enacting clause and insert the following:**

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

19 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

20 (a) Short Title.—This Act may be cited as the “Elder Abuse Prevention and Prosecution Act”.

21 (b) Table of Contents.—The table of contents for this Act is as follows:

22 Sec.1.Short title; table of contents.

23 Sec.2.Definitions.

24 **TITLE I—SUPPORTING FEDERAL CASES INVOLVING**
25 **ELDER JUSTICE**

26 Sec.101.Supporting Federal cases involving elder justice.

27 **TITLE II—IMPROVED DATA COLLECTION AND**
28 **FEDERAL COORDINATION**

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

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

1 TITLE III—ENHANCED VICTIM ASSISTANCE TO ELDER
2 ABUSE SURVIVORS

3 Sec.301.Sense of the Senate.

4 Sec.302.Report.

5 TITLE IV—ROBERT MATAVA ELDER ABUSE
6 PROSECUTION ACT OF 2016

7 Sec.401.Short title.

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

9 Sec.403.Training and technical assistance for States.

10 Sec.404.Interstate initiatives.

11 TITLE V—MISCELLANEOUS

12 **Sec.501.Court-appointed guardianship oversight activities under the Elder Justice Act of**
13 **2009.**

14 **Sec.502.GAO reports.**

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

16 **Sec.504.Model power of attorney legislation.**

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

18 SEC. 2. DEFINITIONS.

19 In this Act—

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

23 (2) ~~the term “adult protective services”—~~

24 ~~(A) means such services provided to adults as specified by the Secretary of Health and~~
25 ~~Human Services; and~~

26 ~~(B) includes services such as—~~

27 ~~(i) receiving reports of elder abuse, neglect, or exploitation;~~

28 ~~(ii) investigating the reports described in clause (i);~~

29 ~~(iii) case planning, monitoring, evaluation, and other case work and services; and~~

30 ~~(iv) providing, arranging for, or facilitating the provision of medical, social service,~~
31 ~~economic, legal, housing, law enforcement, or other protective emergency, or support~~
32 ~~services;~~

33 (3) the term “elder” means an individual who is 60 years of age or older;

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

2 ~~(5)~~**(3)** the term “State” means each of the several States of the United States, the District
3 of Columbia, the Commonwealth of Puerto Rico, and any other territory or possession of
4 the United States.

5 TITLE I—SUPPORTING FEDERAL CASES INVOLVING 6 ELDER JUSTICE

7 SEC. 101. SUPPORTING FEDERAL CASES INVOLVING 8 ELDER JUSTICE.

9 (a) Support and Assistance.—

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

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

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

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

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

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

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

26 (B) relevant forensic training relating to elder abuse.

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

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

1 Department of Justice relating to elder abuse.

2 (b) Department of Justice Elder Justice Coordinator.—Not later than 60 days after the date of
3 enactment of this Act, the Attorney General shall designate an Elder Justice Coordinator within
4 the Department of Justice who, in addition to any other responsibilities, shall be responsible
5 for—

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

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

14 (A) conduct investigations in elder abuse cases;

15 (B) address evidentiary issues and other legal issues; and

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

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

21 (c) Federal Trade Commission.—

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

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

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

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

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

- 1 (B) the style of the case, including the case name and number;
- 2 (C) a description of the scheme or scam; and
- 3 (D) the outcome of the case.

4 (d) Use of Appropriated Funds.—No additional funds are authorized to be appropriated to
5 carry out this section.

6 TITLE II—IMPROVED DATA COLLECTION AND 7 FEDERAL COORDINATION

8 SEC. 201. ESTABLISHMENT OF BEST PRACTICES FOR 9 LOCAL, STATE, AND FEDERAL DATA COLLECTION.

10 (a) In General.—The Attorney General, in consultation with Federal, State, and local law
11 enforcement agencies, shall—

- 12 (1) establish best practices for data collection to focus on elder abuse; and
- 13 (2) provide technical assistance to State, local, and tribal governments in adopting the
14 best practices established under paragraph (1).

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

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

20 SEC. 202. EFFECTIVE INTERAGENCY COORDINATION 21 AND FEDERAL DATA COLLECTION.

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

- 24 (1) collect from Federal law enforcement agencies, **other agencies as appropriate**, and
25 Federal prosecutor offices statistical data related to elder abuse cases, including cases or
26 investigations where one or more victims were elders, or the case or investigation involved
27 a financial scheme or scam that was either targeted directly toward or largely affected
28 elders; and
- 29 (2) publish on the website of the Department of Justice in a publicly accessible manner—
 - 30 (A) a summary of the data collected under paragraph (1); and
 - 31 (B) recommendations for collecting additional data relating to elder abuse, including
32 recommendations for ways to improve data reporting across Federal, State, and local
33 agencies.

34 (b) Requirement.—The data collected under subsection (a)(1) shall include—

- 35 (1) the total number of investigations initiated by Federal law enforcement agencies,
36 **other agencies as appropriate**, and Federal prosecutor offices related to elder abuse;

- 1 (2) the total number and types of elder abuse cases filed in Federal courts; and
2 (3) for each case described in paragraph (2)—
3 (A) the name of the district where the case originated;
4 (B) the style of the case, including the case name and number;
5 (C) a description of the act or acts giving rise to the elder abuse;
6 (D) in the case of a scheme or scam, a description of such scheme or scam giving
7 rise to the elder abuse;
8 (E) information about each alleged perpetrator of the elder abuse; and
9 (F) the outcome of the case.

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

14 (d) Prohibition on Individual Data.—None of the information reported under this section shall
15 include specific individual identifiable data.

16 TITLE III—ENHANCED VICTIM ASSISTANCE TO ELDER 17 ABUSE SURVIVORS

18 SEC. 301. SENSE OF THE SENATE.

19 (a) Findings.—The Senate finds the following:

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

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

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

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

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

29 (b) Sense of the Senate.—It is the sense of the Senate ~~that~~— **that**—

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

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

36 (3) the Senate supports a multipronged approach to prevent elder abuse and exploitation,

1 protect the victims of elder abuse and exploitation from further harm, and bring the
2 perpetrators of such crimes to justice.

3 SEC. 302. REPORT.

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

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

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

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

15 TITLE IV—ROBERT MATAVA ELDER ABUSE 16 PROSECUTION ACT OF 2016

17 SEC. 401. SHORT TITLE.

18 This title may be cited as the “Robert Matava Elder Abuse Prosecution Act of 2016”.

19 SEC. 402. ENHANCED PENALTY FOR TELEMARKETING 20 AND EMAIL MARKETING FRAUD DIRECTED AT 21 ELDERS.

22 (a) In General.—Chapter 113A of title 18, United States Code, is amended—

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

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

26 “2325. Definition

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

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

29 “(A) purchases of goods or services;

30 “(B) participation in a contest or sweepstakes;

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

32 “(D) investment for financial profit;

33 “(E) participation in a business opportunity;

1 “(F) commitment to a loan; or
2 “(G) participation in a fraudulent medical study, research study, or pilot study,
3 by use of ~~one~~ 1 or more interstate telephone calls, emails, text messages, or electronic
4 instant messages initiated either by a person who is conducting the plan, program,
5 promotion, or campaign or by a prospective purchaser or contest or sweepstakes participant
6 or charitable contributor, donor, or investor; and

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

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

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

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

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

14 if the person making the solicitation does not solicit customers by telephone, email, text
15 message, or electronic instant message, but only receives interstate telephone calls, emails,
16 text messages, or electronic instant messages initiated by customers in response to the
17 written materials, whether in hard copy or digital format, and in response to those interstate
18 telephone calls, emails, text messages, or electronic instant messages does not conduct
19 further solicitation.”;

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

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

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

24 (4) by adding at the end the following:

25 “2328. Mandatory forfeiture

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

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

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

33 “(b) Procedures.—The procedures set forth in section 413 of the Controlled Substances Act
34 (21 U.S.C. 853), other than subsection (d) of that section, and in Rule 32.2 of the Federal Rules
35 of Criminal Procedure, shall apply to all stages of a criminal forfeiture proceeding under this
36 section.”.

37 (b) Technical and Conforming Amendments.—

38 (1) The table of chapters at the beginning of part I of title 18, United States Code, is

1 amended by striking the item relating to chapter 113A and inserting the following:
2 “113A. Telemarketing and email marketing fraud
3 2325”.

4 (2) The table of sections for chapter 113A of title 18, United States Code, is amended by
5 inserting after the item relating to section 2327 the following:
6 “2328. Mandatory forfeiture.”.

7 **SEC. 403. TRAINING AND TECHNICAL ASSISTANCE** 8 **FOR STATES.**

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

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

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

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

18 (C) neglect of elders; and

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

21 **SEC. 404. INTERSTATE INITIATIVES.**

22 (a) Interstate Agreements and Compacts.—The consent of Congress is given to any two or
23 more States (acting through State agencies with jurisdiction over adult protective services) to
24 enter into agreements or compacts for cooperative effort and mutual assistance—

25 (1) in promoting the safety and well-being of elders; and

26 (2) in enforcing their respective laws and policies to promote such safety and well-being.

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

33 **TITLE V—MISCELLANEOUS**

34 **SEC. 501. COURT-APPOINTED GUARDIANSHIP** 35 **OVERSIGHT ACTIVITIES UNDER THE ELDER**

1 JUSTICE ACT OF 2009.

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

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

5 (2) in paragraph (2)—

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

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

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

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

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

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

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

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

28 “(A) AWARD OF GRANTS.—In awarding grants to the highest courts of States for
29 demonstration programs described in paragraph (2)(E), the Secretary shall
30 consider the recommendations of the Attorney General and the State Justice
31 Institute, as established by section 203 of the State Justice Institute Act of 1984
32 (42 U.S.C. 10702).

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

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

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

4 **SEC. 502. GAO REPORTS.**

5 (a) Elder Justice Recommendations.—Not later than 18 months after the date of
6 enactment of this Act, the Comptroller General of the United States shall review existing
7 Federal programs and initiatives in the Federal criminal justice system relevant to elder
8 justice and shall submit to Congress—

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

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

12 (b) Report on Elder Abuse and International Criminal Enterprises.—Not later than 18
13 months after the date of enactment of this Act, the Comptroller General of the United
14 States shall submit to Congress a report on—

15 (1) the extent to which older adults of the United States are being exploited in global
16 drug trafficking schemes and other international criminal enterprises;

17 (2) the extent to which the exploitation of older adults of the United States by
18 international criminal enterprises has resulted in the incarceration of these citizens of
19 the United States in foreign court systems, including a description of the total number
20 of such cases pending in foreign court systems; and

21 (3) whether, and to what extent, the Federal Government has intervened with
22 foreign officials on behalf of citizens of the United States who are elder abuse victims
23 in international criminal enterprises, including a description, to the extent such data is
24 available, of—

25 (A) the total annual number of elder abuse cases pending in the United States
26 and foreign court systems; and

27 (B) the total annual number of citizens of the United States who are over the
28 age of 60 years and who are incarcerated overseas as a result of their exploitation
29 in global drug trafficking schemes or other international criminal enterprises.

30 **SEC. 503. OUTREACH TO STATE AND LOCAL LAW** 31 **ENFORCEMENT AGENCIES.**

32 The Attorney General shall submit to the Committee on the Judiciary of the Senate and
33 the Committee on the Judiciary of the House of Representatives a report on efforts by the
34 Department of Justice to conduct outreach to State and local law enforcement agencies on
35 the process for collaborating with the Federal Government for the purpose of investigating
36 and prosecuting interstate and international elder financial exploitation cases.

37 **SEC. 504. MODEL POWER OF ATTORNEY** 38 **LEGISLATION.**

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

3 **SEC. 505. BEST PRACTICES AND MODEL**
4 **LEGISLATION FOR GUARDIANSHIP PROCEEDINGS.**

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