

# The Passage of the Elder Justice Act

By Janice Selberg

**T**racing the legislative history of federal acts is made more difficult with the modern propensity to package laws into bigger parcels for passage. Budget legislation—as well as criminal, social benefit, and education law—is voted on in thousand-page bundles in an attempt to attract the approval of opposing forces. Despite the fact that federal legislative history is traditionally well documented, untangling disparate measures from the whole is easier said than done.

The Elder Justice Act was passed as part of the Patient Protection and Affordable Care Act<sup>1</sup> in 2010 and comprises only 22 pages of the 1,024-page measure. Its inclusion in the Affordable Care Act was the final step of a process that began 10 years earlier with conversations among U.S. Senate staffers, particularly those of Senator Charles Grassley of Iowa, centering on nursing home issues. Marie-Therese Connolly, who is credited with being the chief architect of the Elder Justice Act while at the Department of Justice,<sup>2</sup> compared the expansion of awareness that occurred with the passage of the federal Child Abuse Prevention and Treatment Act in 1974 and the Violence Against Women Act in 1994 with the relative lack of it in the area of elder abuse. The establishment of Adult Protective Services in the mid-1970s under Title XX of the Social Security Act resulted in block grants to states but uneven administration across jurisdictions. Throughout the 1980s and '90s, the elder population increased but relative funding declined.<sup>3</sup>

Supporters of legislation to improve perception of the problem and enforcement in the area of elder abuse in the early 2000s had several goals: establishing bipartisan support from the outset, learning from previous anti-abuse legislation, and building a solid

foundation of research and education to inform policymaking. The original cosponsors included Senators John Breaux, Orrin Hatch, Max Baucus, and Rick Santorum.<sup>4</sup>

With such broad support across the political spectrum, the Elder Justice Act was introduced in 2002. Disappointingly, S. 2933 was referred to the Senate Finance Committee and died there. The identical legislation, S. 333, was introduced in 2003 and suffered the same fate. By the time the Elder Justice Act was reintroduced in 2005, bipartisan support was still strong; S. 2010 was reported out of committee and H.R. 4993 was sent to the Select Committee on Education but failed to go to a vote. In 2007, we saw the simultaneous introduction of House and Senate bills—H.R. 1783 and S. 1070; despite this, the 110th Congress was also unsuccessful in passing the Elder Justice Act. A few of the provisions of the original 2002 legislation wound up in the 2006 reauthorization of the Older Americans Act<sup>5</sup> because of the efforts of dedicated advocates.

The prevailing version of the Elder Justice Act in 2009 was the Senate version (S. 795) as marked up in the Finance Committee. Max Baucus, then committee chair and one of the main promoters of the legislation which ultimately became the Affordable Care Act, agreed to include the Elder Justice Act as part of the Affordable Care Act. The final version differs from the 2002

S. 2933 in an important respect: it leaves out the criminal and civil justice aspects of the law in recognition that elder abuse is a “multifaceted” problem that requires funding at all levels.<sup>6</sup>

The main provisions of the Elder Justice Act, which amends Title XX of the Social Security Act, include:

- Establishment of an Elder Justice Coordinating Council within the Office of the Secretary of Health and Human Services. The purpose of the council is to make recommendations to the secretary concerning abuse, neglect, and exploitation of the elderly and to coordinate Health and Human Services activities in this arena. In addition, grants are authorized to support state and local governments for adult protective services projects.
- Authorization to award grants to states for long-term care ombudsman programs.
- Establishment of a National Training Institute by the secretary to target the improvement of response to urgent complaints about long-term care facilities, among other activities.
- Creation of grants supporting forensic centers in the development of methodologies to determine whether abuse or neglect has occurred.

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- A requirement for owners, operators, employees, managers, agencies, or contractors of long-term care facilities receiving at least \$10,000 in federal funds to report any reasonable suspicion of crimes against residents to local law enforcement and the secretary. In addition, penalties for nonreporting and retaliation are established.
  - Authorization for a study on a national nurse-aide registry and linking a registry to national and state background checks on direct-care employees.
  - Promulgation of rules and guidelines to assist research in the area of elder abuse and exploitation.
- Despite the general acknowledgement that the Elder Justice Act is the first comprehensive national legislation enacted on elder abuse, four and a half years after its passage, the \$626 million authorized for four years of grants and programs under the act has not been appropriated. A 2011 Government Accountability Office report to the chairman of the Senate's Committee on Aging<sup>7</sup> contained the following statement:
- While the federal government provides some information on effective interventions and appropriate outcomes in elder abuse cases, states noted that it is not sufficient given the growing demand for APS services and the increasing complexity of APS cases and more is needed in these areas.<sup>8</sup>
- In June 2012, possibly in part as a response to the discussion surrounding the Elder Justice Act and the proposed Elder Abuse Victims Act, a 10-bill package on the protection of the elderly and vulnerable adults that originated in the Michigan Senate became law. The legislation is 2012 Public Acts 168–177 and includes:
- Enhanced felony penalties for embezzlement from a vulnerable adult as well as fraudulently obtaining a signature. The sentencing guidelines are also amended.
  - An alert act to inform law enforcement and broadcasters when a vulnerable adult is missing.
  - A requirement to develop a state model protocol for the investigation of vulnerable adult abuse cases.
  - As a parallel to the Elder Justice Act, amendment of the Public Health Code to require nursing home employees and others to report reasonable suspicion of vulnerable adult and elder abuse.
  - Amendment of the Estates and Protected Individuals Code to prevent a person from benefitting from the estate if convicted of abuse of the decedent. The amendment requires incapacitated individuals to be informed of rights in writing, among other provisions.
  - Consent for county medical examiners to establish vulnerable adult death review teams.
  - Amendment of the Elder Justice Act to extend to vulnerable adults' special accommodations in certain court proceedings.
  - Amendment of the Code of Criminal Procedure to specify that a magistrate could not refuse to accept a complaint alleging a crime against a vulnerable adult on the grounds that the complaint is signed by an individual other than the victim. ■

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## ENDNOTES

1. PL 111-148, 124 Stat 119.
2. See Knauer, *Aging in the United States: Rethinking justice, equality, and identity across the lifespan*, 21 Temple Pol & Civ Rts L R 305, 310 (2012).
3. Falk, Baigis & Kopac, *Elder Mistreatment and the Elder Justice Act* (September 2012) <<http://www.nursingworld.org/MainMenuCategories/ANAMarketplace/ANAPeriodicals/OJIN/TableofContents/Vol-17-2012/No3-Sept-2012/Articles-Previous-Topics/Elder-Mistreatment-and-Elder-Justice-Act.html>>. All websites cited in this article were accessed October 17, 2014.
4. Connolly, *Policy update: How change happens*, 21 Temple Pol & Civ Rts L R 329, 330 (2012).
5. *Id.* at 330.
6. Stiegel, *Elder Justice Act Becomes Law, but Victory is Only Partial*, 31 Bifocal 1 (March–April 2010), available at <[http://www.americanbar.org/content/dam/aba/migrated/aging/PublicDocuments/eja\\_act\\_art\\_prtl.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/migrated/aging/PublicDocuments/eja_act_art_prtl.authcheckdam.pdf)>.
7. U.S. Government Accountability Office, Special Committee on Aging, GAO-11-208, *Elder Justice: Stronger Federal Leadership Could Enhance National Response to Elder Abuse* (2011), available at <<http://www.gao.gov/assets/320/316224.pdf>>.
8. *Id.* at 34–35.



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