

# Calendar No. 780

108<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

# S. 2940

[Report No. 108-391]

To amend the Older Americans Act of 1965 to assist States in preventing, detecting, treating, intervening in, and responding to elder abuse, neglect, and exploitation, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

OCTOBER 7, 2004

Mr. GREGG, from the Committee on Health, Education, Labor, and Pensions reported the following original bill; which was read twice and placed on the calendar

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## A BILL

To amend the Older Americans Act of 1965 to assist States in preventing, detecting, treating, intervening in, and responding to elder abuse, neglect, and exploitation, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Act for Elder Justice”.

1 **SEC. 2. PURPOSES.**

2 The purposes of this Act are as follows:

3 (1) To assist States and Indian tribes in devel-  
4 oping a comprehensive multi-disciplinary approach  
5 to elder justice.

6 (2) To promote research and data collection  
7 that will fill gaps in knowledge about elder abuse,  
8 neglect, and exploitation.

9 (3) To support innovative and effective activi-  
10 ties of service providers and programs that are de-  
11 signed to address issues relating to elder abuse, ne-  
12 glect, and exploitation.

13 (4) To assist States, Indian tribes, and local  
14 service providers in the development of short- and  
15 long-term strategic plans for the development and  
16 coordination of elder justice research, programs,  
17 studies, training, and other efforts.

18 (5) To promote collaborative efforts and dimin-  
19 ish overlap and gaps in efforts in developing the im-  
20 portant field of elder justice.

21 **SEC. 3. OFFICE OF ELDER ABUSE PREVENTION AND SERV-**  
22 **ICES.**

23 Section 201 of the Older Americans Act of 1965 (42  
24 U.S.C. 3011) is amended by adding at the end the fol-  
25 lowing:

1       “(e)(1) In this subsection, the terms defined in sec-  
2 tion 751 shall have the meanings given those terms in that  
3 section.

4       “(2) The Secretary is authorized to establish or des-  
5 ignate within the Administration (as defined in section  
6 102) an Office of Elder Abuse Prevention and Services.

7       “(3) It shall be the duty of the Assistant Secretary,  
8 acting through the head of the Office of Elder Abuse Pre-  
9 vention and Services to—

10           “(A) develop objectives, priorities, policy, and a  
11 long-term plan for—

12                   “(i) carrying out elder justice programs  
13 and activities relating to—

14                           “(I) elder abuse prevention, detection,  
15 treatment, and intervention, and response;

16                           “(II) training of individuals regarding  
17 the matters described in subclause (I); and

18                           “(III) the improvement of the elder  
19 justice system in the United States;

20                   “(ii) collecting and disseminating data an-  
21 nually relating to the abuse, neglect, and exploi-  
22 tation of elders (and, in the discretion of the  
23 Secretary, vulnerable adults) in coordination  
24 with the efforts of the Bureau of Justice Statis-

1           tics of the Office of Justice Programs of the  
2           Department of Justice to collect national data;

3           “(iii) disseminating information concerning  
4           best practices regarding, and providing training  
5           on, carrying out activities related to abuse, ne-  
6           glect, and exploitation of elders (and, in the dis-  
7           cretion of the Secretary, vulnerable adults);

8           “(iv) in conjunction with the necessary ex-  
9           perts, conducting research related to abuse, ne-  
10          glect, and exploitation of elders (and, in the dis-  
11          cretion of the Secretary, vulnerable adults); and

12          “(v) providing technical assistance to  
13          States and other eligible entities that provide or  
14          fund the provision of the services described in  
15          subtitle B of title VII;

16          “(B) implement the overall policy and a strat-  
17          egy to carry out the plan described in subparagraph  
18          (A); and

19          “(C) provide advice to the Secretary on elder  
20          justice issues and administer such programs relating  
21          to elder abuse, neglect, and exploitation as the Sec-  
22          retary determines to be appropriate.

23          “(4) The Secretary, acting through the Assistant Sec-  
24          retary, may issue such regulations as may be necessary  
25          to carry out this subsection and subtitle B of title VII.”.

1 **SEC. 4. ELDER JUSTICE PROGRAMS.**

2 (a) GENERAL DEFINITIONS.—Section 102 of the  
3 Older Americans Act of 1965 (42 U.S.C. 3002) is amend-  
4 ed—

5 (1) by striking paragraph (24) and inserting  
6 the following:

7 “(24) The term ‘exploitation’ means the fraudu-  
8 lent or otherwise illegal, unauthorized, or improper  
9 act or process of an individual, including a caregiver  
10 or fiduciary (as such terms are defined in section  
11 751), that uses the resources of an older individual  
12 for monetary or personal benefit, profit, or gain, or  
13 that results in depriving an older individual of right-  
14 ful access to, or use of, benefits, resources, belong-  
15 ings, or assets.”; and

16 (2) by striking paragraph (34) and inserting  
17 the following:

18 “(34) The term ‘neglect’ means—

19 “(A) the intentional, deliberate, or knowing  
20 failure of a caregiver or fiduciary (as such  
21 terms are defined in section 751) to provide the  
22 goods or services that are necessary to maintain  
23 the health or safety of an older individual; or

24 “(B) an adult’s inability, due to physical,  
25 mental, or cognitive impairment or diminished

1 capacity, to perform essential self-care tasks in-  
 2 cluding—

3 “(i) obtaining essential food, clothing,  
 4 shelter, and medical care;

5 “(ii) obtaining goods and services nec-  
 6 essary to maintain physical health, mental  
 7 health, or general safety; or

8 “(iii) managing one’s own financial af-  
 9 fairs.”.

10 (b) ELDER JUSTICE DEFINITIONS AND PRO-  
 11 GRAMS.—Title VII of the Older Americans Act of 1965  
 12 (42 U.S.C. 3058 et seq.) is amended—

13 (1) by redesignating subtitles B and C as sub-  
 14 titles C and D, respectively;

15 (2) by redesignating sections 751, and 761  
 16 through 764, as sections 761, and 771 through 774,  
 17 respectively; and

18 (3) by inserting after subtitle A the following:

19 **“Subtitle B—Elder Justice**  
 20 **Programs**

21 **“SEC. 751. DEFINITIONS.**

22 “In this subtitle:

23 “(1) CAREGIVER.—The term ‘caregiver’ means  
 24 an individual who has the responsibility for the care  
 25 of an elder, either voluntarily, by contract, by receipt

1 of payment for care, or as a result of the operation  
2 of law and means a family member or other indi-  
3 vidual who provides (on behalf of such individual or  
4 of a public or private agency, organization, or insti-  
5 tution) compensated or uncompensated care to an  
6 elder.

7 “(2) DIRECT CARE.—The term ‘direct care’  
8 means care by an employee or contractor who pro-  
9 vides assistance or long-term care services to a re-  
10 cipient.

11 “(3) ELDER.—The term ‘elder’ means an older  
12 individual, as defined in section 102.

13 “(4) ELDER JUSTICE.—The term ‘elder justice’  
14 means—

15 “(A) efforts to prevent, detect, treat, inter-  
16 vene in, and respond to elder abuse, neglect,  
17 and exploitation and to protect elders with di-  
18 minished capacity while maximizing their au-  
19 tonomy; and

20 “(B) from an individual perspective, the  
21 recognition of an elder’s rights, including the  
22 right to be free of abuse, neglect, and exploi-  
23 tation.

24 “(5) ELIGIBLE ENTITY.—The term ‘eligible en-  
25 tity’ means a State or local government agency, In-

1       dian tribe, or any other public or private entity, that  
2       is engaged in and has expertise in issues relating to  
3       elder justice.

4           “(6) FIDUCIARY.—The term ‘fiduciary’—

5               “(A) means a person or entity with the  
6               legal responsibility—

7                   “(i) to make decisions on behalf of  
8                   and for the benefit of another person; and

9                   “(ii) to act in good faith and with  
10                  fairness; and

11               “(B) includes a trustee, a guardian, a con-  
12               servator, an executor, an agent under a finan-  
13               cial power of attorney or health care power of  
14               attorney, or a representative payee.

15           “(7) GRANT.—The term ‘grant’ includes a con-  
16           tract, cooperative agreement, or other mechanism  
17           for providing financial assistance.

18           “(8) LAW ENFORCEMENT.—The term ‘law en-  
19           forcement’ means the full range of potential re-  
20           sponders to elder abuse, neglect, and exploitation in-  
21           cluding—

22               “(A) police, sheriffs, detectives, public safe-  
23               ty officers, and corrections personnel;

24               “(B) prosecutors;

25               “(C) medical examiners;

1 “(D) investigators; and

2 “(E) coroners.

3 “(9) LONG-TERM CARE.—

4 “(A) IN GENERAL.—The term ‘long-term  
5 care’ means supportive and health services spec-  
6 ified by the Secretary for individuals who need  
7 assistance because the individuals have a loss of  
8 capacity for self-care due to illness, disability,  
9 or vulnerability.

10 “(B) LOSS OF CAPACITY FOR SELF-  
11 CARE.—For purposes of subparagraph (A), the  
12 term ‘loss of capacity for self-care’ means an in-  
13 ability to engage effectively in activities of daily  
14 living, including eating, dressing, bathing, and  
15 management of one’s financial affairs.

16 “(10) LONG-TERM CARE FACILITY.—The term  
17 ‘long-term care facility’ means a residential care pro-  
18 vider that arranges for, or directly provides, long-  
19 term care.

20 “(11) NURSING FACILITY.—The term ‘nursing  
21 facility’ has the meaning given such term under sec-  
22 tion 1919(a) of the Social Security Act (42 U.S.C.  
23 1396r(a)).

1           “(12) STATE LEGAL ASSISTANCE DEVEL-  
 2           OPER.—The term ‘State legal assistance developer’  
 3           means an individual described in section 731.

4           “(13) STATE LONG-TERM CARE OMBUDSMAN.—  
 5           The term ‘State Long-Term Care Ombudsman’  
 6           means the State Long-Term Care Ombudsman de-  
 7           scribed in section 712(a)(2).

8   **“SEC. 752. STATE AND TRIBAL GRANTS TO STRENGTHEN**  
 9                           **LONG-TERM CARE AND PROVIDE ASSISTANCE**  
 10                           **FOR ELDER JUSTICE PROGRAMS.**

11          “(a) GRANTS.—The Assistant Secretary may award  
 12          grants to States and Indian tribes to enable the States  
 13          and tribes to strengthen long-term care and provide assist-  
 14          ance for elder justice programs.

15          “(b) APPLICATION.—To be eligible to receive a grant  
 16          under this subtitle, a State or Indian tribe shall submit  
 17          an application to the Assistant Secretary at such time, in  
 18          such manner, and containing such information as the As-  
 19          sistant Secretary may require.

20          “(c) USE OF FUNDS.—A State or Indian tribe that  
 21          receives a grant under this subtitle may use the funds  
 22          made available through the grant to award grants—

23                   “(1) to eligible entities for the prevention, de-  
 24                   tection, assessment, and treatment of, intervention

1 in, investigation of, and response to elder abuse, ne-  
2 glect, and exploitation;

3 “(2) to eligible entities to examine various types  
4 of elder shelters (in this paragraph referred to as  
5 ‘safe havens’), and to test various safe haven models  
6 for establishing safe havens (at home or elsewhere),  
7 that—

8 “(A) recognize autonomy and self-deter-  
9 mination, and fully protect the due process  
10 rights of elders; and

11 “(B)(i) provide a comprehensive, culturally  
12 sensitive, and multidisciplinary team response  
13 to allegations of elder abuse, neglect, or exploi-  
14 tation;

15 “(ii) provide a dedicated, elder-friendly set-  
16 ting;

17 “(iii) have the capacity to meet the needs  
18 of elders for care; and

19 “(iv) provide various services including—

20 “(I) nursing and forensic evaluation;

21 “(II) therapeutic intervention;

22 “(III) victim support and advocacy;

23 and

24 “(IV) case review and assistance to  
25 make the elders safer at home or to find

1           appropriate placement in safer environ-  
2           ments, including shelters, and, in some cir-  
3           cumstances long-term care facilities, other  
4           residential care facilities, and hospitals;

5           “(3) to eligible entities to establish or continue  
6           volunteer programs that focus on the issues of elder  
7           abuse, neglect, and exploitation, or to provide related  
8           services;

9           “(4) to eligible entities to support multidisci-  
10          plinary elder justice activities, such as—

11           “(A) supporting and studying team ap-  
12           proaches for bringing a coordinated multidisci-  
13           plinary or interdisciplinary response to elder  
14           abuse, neglect, and exploitation, including a re-  
15           sponse from individuals in social service, health  
16           care, public safety, and legal disciplines;

17           “(B) establishing a State or tribal coordi-  
18           nating council, which shall identify the indi-  
19           vidual State’s or Indian tribe’s needs and pro-  
20           vide the Secretary with information and rec-  
21           ommendations relating to efforts by the State  
22           or Indian tribe to combat elder abuse, neglect,  
23           and exploitation;

24           “(C) providing training, technical assist-  
25           ance, and other methods of support to groups

1 carrying out multidisciplinary efforts at the  
2 State or Indian tribe level (referred to in some  
3 States as ‘State Working Groups’);

4 “(D) broadening and studying various  
5 models for elder fatality and serious injury re-  
6 view teams, to make recommendations about  
7 their composition, protocols, functions, timing,  
8 roles, and responsibilities, with a goal of pro-  
9 ducing models and information that will allow  
10 for replication based on the needs of other  
11 States, Indian tribes, and communities; or

12 “(E) carrying out such other interdiscipli-  
13 nary or multidisciplinary efforts as the Assist-  
14 ant Secretary determines to be appropriate;

15 “(5) to eligible entities to provide training for  
16 individuals with respect to issues of elder abuse, ne-  
17 glect, and exploitation, consisting of—

18 “(A) training within a discipline; or

19 “(B) cross-training activities that permit  
20 individuals in multiple disciplines to train to-  
21 gether, fostering communication, coordinating  
22 efforts, and ensuring collaboration;

23 “(6) to eligible entities to address underserved  
24 populations of elders, such as—

25 “(A) elders living in rural locations;

1                   “(B) elders in minority populations; or

2                   “(C) low-income elders;

3                   “(7) to eligible entities to provide incentives for  
4 individuals to train for, seek, and maintain employ-  
5 ment providing direct care in a long-term care facil-  
6 ity, such as—

7                   “(A) to eligible entities to provide incen-  
8 tives to participants in programs carried out  
9 under part A of title IV, and section 403(a)(5),  
10 of the Social Security Act (42 U.S.C. 601 et  
11 seq., 603(a)(5)) to train for and seek employ-  
12 ment providing direct care in a long-term care  
13 facility;

14                   “(B) to long-term care facilities to carry  
15 out programs through which the facilities—

16                   “(i) offer, to employees who provide  
17 direct care to residents of a long-term care  
18 facility, continuing training and varying  
19 levels of professional certification, based on  
20 observed clinical care practices and the  
21 amount of time the employees spend pro-  
22 viding direct care; and

23                   “(ii) provide, or make arrangements  
24 with employers to provide, bonuses or  
25 other increased compensation or benefits to

1 employees who achieve professional certifi-  
2 cation under such a program; or

3 “(C) to long-term care facilities to enable  
4 the facilities to provide training and technical  
5 assistance to eligible employees regarding man-  
6 agement practices using methods that are dem-  
7 onstrated to promote retention of employees of  
8 the facilities, such as—

9 “(i) the establishment of basic human  
10 resource policies that reward high perform-  
11 ance, including policies that provide for im-  
12 proved wages and benefits on the basis of  
13 job reviews; or

14 “(ii) the establishment of other pro-  
15 grams that promote the provision of high  
16 quality care, such as a continuing edu-  
17 cation program that provides additional  
18 hours of training, including on-the-job  
19 training, for employees who are certified  
20 nurse aides;

21 “(8) to encourage the establishment of eligible  
22 partnerships to develop collaborative and innovative  
23 approaches to improve the quality of, including pre-  
24 venting abuse, neglect, and exploitation in, long-term  
25 care; or

1           “(9) to eligible entities to establish multidisci-  
2           plinary panels to address and develop best practices  
3           concerning methods of—

4                   “(A) improving the quality of long-term  
5           care; and

6                   “(B) addressing abuse, including resident-  
7           to-resident abuse, in long-term care.

8           “(d) ADMINISTRATIVE EXPENSES.—A State or In-  
9           dian tribe that receives a grant under this section shall  
10          not use more than 5 percent of the funds made available  
11          through the grant to pay for administrative expenses.

12          “(e) SUPPLEMENT NOT SUPPLANT.—Funds made  
13          available pursuant to this section shall be used to supple-  
14          ment and not supplant other Federal, State, and local (in-  
15          cluding tribal) funds expended to provide activities de-  
16          scribed in subsection (c).

17          “(f) MAINTENANCE OF EFFORT.—The State or In-  
18          dian tribe, in using the proceeds of a grant received under  
19          this section, shall maintain the expenditures of the State  
20          or tribe for activities described in subsection (c) at a level  
21          equal to not less than the level of such expenditures main-  
22          tained by the State or tribe for the fiscal year preceding  
23          the fiscal year for which the grant is received.

24          “(g) ACCOUNTABILITY MEASURES.—The Assistant  
25          Secretary shall develop accountability measures to ensure

1 the effectiveness of the activities conducted using funds  
2 made available under this section, including accountability  
3 measures to ensure that the activities described in sub-  
4 section (c)(7) benefit eligible employees and increase the  
5 stability of the long-term care workforce.

6       “(h) EVALUATING PROGRAMS.—The Assistant Sec-  
7 retary shall evaluate the activities conducted using funds  
8 made available under this section and shall use the results  
9 of such evaluation to determine the activities for which  
10 funds made available under this section may be used.

11       “(i) COMPLIANCE WITH APPLICABLE LAWS.—In  
12 order to receive funds under this section, an entity shall  
13 comply with all applicable laws, regulations, and guide-  
14 lines.

15       “(j) ELIGIBLE PARTNERSHIPS.—In subsection  
16 (c)(8), the term ‘eligible partnership’ means a multidisci-  
17 plinary community partnership consisting of eligible enti-  
18 ties or appropriate individuals, such as a partnership con-  
19 sisting of representatives in a community of nursing facil-  
20 ity providers, State legal assistance developers, advocates  
21 for residents of long-term care facilities, State Long-Term  
22 Care Ombudsmen, surveyors, the State agency with re-  
23 sponsibility for adult protective services, the State agency  
24 with responsibility for licensing long-term care facilities,  
25 law enforcement agencies, courts, family councils, resi-

1 dents, certified nurse aides, registered nurses, physicians,  
2 and other eligible entities and appropriate individuals.

3 “(k) AUTHORIZATION OF APPROPRIATIONS.—There  
4 are authorized to be appropriated to carry out this section  
5 such sums as may be necessary for each of fiscal years  
6 2005 through 2008.”.



Calendar No. 780

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**S. 2940**

[Report No. 108-391]

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## **A BILL**

To amend the Older Americans Act of 1965 to assist States in preventing, detecting, treating, intervening in, and responding to elder abuse, neglect, and exploitation, and for other purposes.

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OCTOBER 7, 2004

Read twice and placed on the calendar