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RESOLVED, That the American Bar Association encourages law firms to develop initiatives to provide women lawyers with opportunities to gain trial and courtroom experience;

FURTHER RESOLVED, That the American Bar Association encourages members of the judiciary to take steps to ensure that women lawyers have equal opportunities to participate in the courtroom;

FURTHER RESOLVED, That the American Bar Association encourages corporate clients to work with outside counsel to ensure that women lawyers have equal opportunities to participate in all aspects of litigation;

FURTHER RESOLVED, That the American Bar Association encourages corporate counsel, together with outside counsel, to work with alternative dispute resolution providers and professionals to encourage the selection of women lawyers as neutrals.
EXECUTIVE SUMMARY

1. Summary of the Resolution.
   The resolution encourages law firms, members of the judiciary, corporate clients, and alternative dispute resolution providers to provide women lawyers with opportunities to gain trial experience, participate in the courtroom and all aspects of litigation, and be selected as neutrals.

2. Summary of the issue which the Resolution addresses.
   Even after several decades in which women comprise approximately 50% of law school graduates, there is a serious gender gap among lawyers in the courtroom and in ADR settings.

3. Explanation of how the proposed policy position will address the issue.
   This policy is needed for the ABA to undertake efforts to encourage law firms, the judiciary, clients, and ADR providers to address gender disparity in the courtroom and in ADR settings.

4. Summary of any minority views or opposition internal and/or external to the ABA which have been identified.
   No minority or opposing views have been identified.
RESOLUTION

1 RESOLVED, That the American Bar Association House of Delegates concurs in the action of
2 the Council of the Section of Legal Education and Admissions to the Bar in adopting the
3 amendments dated February 2018 to Standard 106 (Separate Locations and Branch Campuses) of
4 the ABA Standards and Rules of Procedure for Approval of Law Schools.
Standard 106. SEPARATE LOCATIONS AND BRANCH CAMPUSES

(a) A law school that offers a separate location shall provide:

(1) Full-time faculty adequate to support the curriculum offered at the separate location and who are reasonably accessible to students at the separate location;

(2) Library resources and staff that are adequate to support the curriculum offered at the separate location and that are reasonably accessible to the student body at the separate location;

(3) Academic advising, career services and other student support services that are adequate to support the student body at the separate location and that are reasonably equivalent to such services offered to similarly situated students at the law school’s main location;

(4) Access to co-curricular activities and other educational benefits adequate to support the student body at the separate location; and

(5) Physical facilities and technological capacities that are adequate to support the curriculum and the student body at the separate location.

(b) In addition to the requirements of section (a), a branch campus must:

(1) Establish a reliable plan that demonstrates that the branch campus has achieved substantial compliance with the Standards and is reasonably likely to be in substantial achievement of full compliance with each of the Standards within three years of the effective date of acquiescence as required by Rule 30;

(2) Comply with instructional requirements and responsibilities as required by Standard 403(a) and Standard 404(a); and

(3) Offer reasonably comparable opportunities for access to the law school’s program of legal education, courses taught by full-time faculty, student services, co-curricular programs, and other educational benefits as required by Standard 311.

(c) A law school is not eligible to establish a separate location until at least four years after the law school is granted initial full approval.
Interpretation 106-1

A law school with more than one location may have one dean for all locations.
EXECUTIVE SUMMARY

1. Summary of the Resolution

Under Rule 45.9(b) of the Rules of Procedure of the House of Delegates, the resolution seeks concurrence in the action of the Council of the Section of Legal Education and Admissions to the Bar in making amendments dated February 2018 to Standard 106 (Separate Locations and Branch Campuses) of the ABA Standards and Rules of Procedure for Approval of Law Schools.

2. Summary of the Issue that the Resolution Addresses

The language in Standard 106(b)(1) and Rule 30(b)(1), which apply to the same situation, is inconsistent. The former requires only “substantial compliance” within three years, rather than “substantial compliance at the time of acquiescence and full compliance within three years.” This inconsistency was identified in the Council’s ongoing review of the Standards and Rules, in accordance with Internal Operating Practice 8.

The Council determined that Rule 30(b)(1) states the appropriate requirements and has consistently reviewed any applications for a branch campus in accordance with the requirements of Rule 30. Accordingly, the proposed revision matches the language of Standard 106(b)(1) to the corresponding language in Rule 30(b)(1).

3. Please Explain How the Proposed Policy Position will address the issue

The proposals amend the 2017-2018 ABA Standards and Rules of Procedure for Approval of Law Schools.

4. Summary of Minority Views

None of which the Council is aware. No comments were received and no one testified at the hearing held on September 28, 2017.
RESOLVED, That the American Bar Association urges federal, state, territorial and tribal courts and legislative bodies to adopt rules or enact legislation to establish an evidentiary privilege by courts for confidential communications between a client and a patent agent reasonably necessary and incidental to certain limited activities authorized by the Patent Act, 35 U.S.C. § 2(b)(2)(D), and U.S. Patent & Trademark Office regulations, 37 C.F.R. § 11.5(b)(1).
EXECUTIVE SUMMARY

1. **Summary of the Resolution**

The Resolution calls for the Association to adopt policy urging courts and legislative bodies to adopt rules or enact legislation to establish a narrow evidentiary privilege applicable by courts only to clients of patent agents who are registered with the U.S. Patent & Trademark Office (PTO), and limited to confidential communications between a client and a patent agent necessary and incidental to certain patent application-related activities authorized by the Patent Act and regulated by the PTO.

2. **Summary of the Issue that the Resolution Addresses**

Congress authorized the PTO to allow both patent agents and lawyers to represent inventors and other patent applicants before the agency, subject to certain requirements. In order to gain authorization, both patent agents and attorneys must submit to the PTO an application demonstrating that they are of good moral character and have the legal and scientific qualifications necessary to prosecute patent applications, they must also pass a lengthy bar-style examination. Once authorized, patent attorneys and patent agents registered to prosecute patent applications before the PTO may undertake on behalf of their inventor and applicant clients certain patent application-related activities set forth in PTO regulations. Shielding communications between those clients and their patent agents is necessary to enable inventors and other patent applicants to use patent agents to file and prosecute patent applications before the PTO while enabling the inventor to share all information necessary and without fear that their confidential information will be disclosed. Uncertainty surrounding the evidentiary privilege remains -- notwithstanding longstanding statutory authority establishing that patent agents are professionals authorized to prosecute patent applications on behalf of others, the PTO’s authorization and regulation of patent agents, and the Federal Circuit’s majority decision in *In re Queen’s University at Kingston*, 820 F.3d 1287, 1298. (Fed. Cir. 2016) holding that an evidentiary privilege applies to client communications with patent agents.

3. **Please Explain How the Proposed Policy Position Will Address the Issue**

The Resolution addresses this uncertainty by urging establishment of an evidentiary privilege that is strictly limited in scope to the statutory and regulatory authorization provided by the PTO for patent agents, which evidentiary privilege should provide assurance that a person or entity who consults a patent agent for the purpose of prosecuting a patent application before the PTO may refuse to disclose the substance of that consultation and may prevent the patent agent from disclosing that information as well. This evidentiary privilege would belong to the client, the client would have the authority to waive the privilege, and, if recognized in the jurisdiction, exceptions to the attorney-client privilege would apply.
4. Summary of Minority Views or Opposition Internal and/or External to the ABA Which Have Been Identified

We are aware of no ABA minority view or opposition. This Resolution is consistent with the Federal Circuit’s majority decision in Queen’s University. The minority view of one dissenting judge finds an insufficient showing of the public interest or real need required to overcome the presumption against creation of a new privilege.
RESOLVED, That the American Bar Association supports efforts in Congress and the federal courts to allow the filing of a copyright infringement action, where the deposit, application, and fee required for registration of copyrights at issue have been delivered in proper form to the Copyright Office.
EXECUTIVE SUMMARY

1. Summary of the Resolution

The Resolution calls for the Association to adopt policy supporting the federal courts and Congress to allow the filing of a civil action for infringement of copyrights once a proper application for registration of a copyright has been delivered to the Copyright Office.

2. Summary of the Issue that the Resolution Addresses

There is currently a split in the circuits with respect to interpretation of Section 411 of the Copyright Act, so that filing of an application for registration with the Copyright Office is sufficient for the copyright owner to initiate an infringement suit in some circuits (the application approach), while a copyright owner must wait until the Copyright Office completes examination of the registration application before the copyright owner may initiate suit in other circuits (the registration approach). The split between circuits that have adopted one or the other approach creates an incentive for parties to forum shop for a court that follows the more favorable rule. Other circuits have not yet established a rule for interpretation of Section 411, resulting in additional uncertainty for copyright owners, accused infringers, and lawyers advising these clients. The consequences for copyright owners include the risk of an owner who applies late in the statute of limitations period losing the right to enforce the copyrights in an infringement action because of the time taken by the Copyright Office to review the application, the risk of delay or forfeit of the right to an immediate temporary restraining order or preliminary injunctive relief, and the risk of losing out on damages to which the owner would be entitled if suit could be initiated without waiting for the Copyright Office to take action.

3. Please Explain How the Proposed Policy Position Will Address the Issue

The Resolution addresses the circuit split and current uncertainty by supporting establishment of a definitive, uniform rule, which would allow the copyright owner’s initiation of a civil action for infringement of copyrights once the owner has delivered to the Copyright Office a proper application for registration. The policy established through this Resolution will provide Association support for legislation or an Association amicus brief in any case addressing the issue.

4. Summary of Minority Views or Opposition Internal and/or External to the ABA Which Have Been Identified

We are aware of no ABA minority view or opposition. Five circuits (First, Second, Fourth, Sixth and Eighth Circuits) have not yet established a rule for interpretation of Section 411 and district courts within those circuits are split. This Resolution is consistent with the approach taken by the Fifth and Ninth Circuits, which have adopted the application rule. The Third, Seventh, Tenth, and Eleventh Circuits, have adopted the registration approach.
RESOLUTION

RESOLVED, That the American Bar Association approves the following programs: Indiana University Purdue University Indianapolis, Paralegal Studies Program, Indianapolis, IN; and Tidewater Community College, Paralegal Studies Program, Virginia Beach, VA;

FURTHER RESOLVED, That the American Bar Association reapproves the following paralegal education programs: University of Alaska Anchorage, Legal Studies Program, Anchorage, AK; John F. Kennedy University, Legal Studies Program, Pleasant Hill, CA; Miramar College, Paralegal Program, San Diego, CA; MTI College, Paralegal Studies Program, Sacramento, CA; Arapahoe Community College, Paralegal Program, Littleton, CO; Wilmington University, Legal Studies Program, New Castle, DE; Athens Technical College, Paralegal Studies Program, Athens, GA; Loyola University, Institute for Paralegal Studies, Chicago, IL; Bowling Green Community College of Western Kentucky University, Paralegal Studies Program, Bowling Green, KY; Herzing University, Legal Assistant/Paralegal and Legal Studies Programs, Kenner, LA; Montclair State University, Paralegal Studies Programs, Montclair, NJ; Edmonds Community College, Paralegal Program, Lynnwood, WA; and Western Technical College, Paralegal Program, LaCrosse, WI;

FURTHER RESOLVED, That the American Bar Association withdraws the approval of Northwestern College, Paralegal Studies Program, Chicago, IL; Central New Mexico Community College, Paralegal Program, Albuquerque, NM; Technical Career Institute, Paralegal Studies Program New York, NY; American National University, Paralegal Studies Program, Dayton, OH; and Brightwood College, Paralegal Studies Program, Dallas, TX, at the requests of the institutions; and
FURTHER RESOLVED, That the American Bar Association extends the terms of approval until the August 2018 Annual Meeting of the House of Delegates for the following programs: Faulkner University, Legal Studies Program, Montgomery, AL; South University, Paralegal and Legal Studies Programs, Montgomery, AL; Pima Community College, Paralegal Program, Tucson, AZ; College of the Canyons, Paralegal Studies Program, Santa Clarita, CA; Los Angeles City College, Paralegal Studies Program, Los Angeles, CA; University of New Haven, Legal Studies Program, West Haven, CT; St. Petersburg College, Paralegal Studies Program, Clearwater, FL; South University, Paralegal and Legal Studies Programs, Royal Palm Beach, FL; Herzing University, Paralegal Studies Program, Atlanta, GA; South University, Paralegal and Legal Studies Programs, Savannah, GA; College of DuPage, Paralegal Program, Glen Ellyn, IL; Illinois State University, Legal Studies Program, Normal, IL; Wilbur Wright College, Paralegal Studies Program, Chicago, IL; Southern Illinois University Carbondale, Paralegal Studies Program, Carbondale, IL; Sullivan University, Institute for Paralegal Studies, Lexington, KY; Elms College, Legal Studies Program, Chicopee, MA; Middlesex Community College, Paralegal Studies Program, Bedford, MA; Grand Valley State University, Legal Studies Program, Grand Rapids, MI; Union County College, Paralegal Studies Program, Cranford, NJ; Finger Lakes Community College, Paralegal Program, Canandaigua, NY; Monroe Community College, Paralegal Studies Program, Rochester, NY; SUNY Rockland Community College, Paralegal Studies Program, Suffern, NY; Fayetteville Technical Community College, Paralegal Technology Program, Fayetteville, NC; Columbus State Community College, Paralegal Studies Program, Columbus, OH; Edison State Community College, Paralegal Studies Program, Piqua, OH; Rose State College, Paralegal Studies Program, Midwest City, OK; Pioneer Pacific College, Paralegal Studies Program, Wilsonville, OR; Portland Community College, Paralegal Program, Portland, OR; Bucks County Community College, Paralegal Studies Program, Newtown, PA; Community College of Philadelphia, Paralegal Studies Program, Philadelphia, PA; Northampton Community College, Paralegal Program, Bethlehem, PA; South University Columbia, Paralegal and Legal Studies Programs, Columbia, SC; National American University, Paralegal Studies Program, Sioux Falls, SD; Brightwood College, General Practice Paralegal Certificate Program and Paralegal Studies Associate Degree Program, Nashville, TN; University of Tennessee Chattanooga, Paralegal Studies Program, Chattanooga, TN, and Salt Lake Community College, Paralegal Studies Program, Salt Lake City, UT.
EXECUTIVE SUMMARY

1. Summary of the Resolution

Grants approval to two programs, grants reapproval to thirteen programs, with draws the approval of five programs, and extends the term of approval of thirty-six programs.

2. Summary of the issue which the Resolution Addresses

The programs recommended for approval and reapproval in the attached report meet the Guidelines for the Approval of Paralegal Education Programs.

3. Please Explain How the Proposed Policy Position will address the issue

The programs recommended for approval and reapproval in this report have followed the procedures required by the Association and are in compliance with the Guidelines for the Approval of Paralegal Education Programs.

4. Summary of Minority Views

None.
RESOLUTION

1 RESOLVED, That the American Bar Association accredits the Privacy Law program of the
2 International Association of Privacy Professionals for a five-year term as a designated specialty
3 certification program for lawyers.
EXECUTIVE SUMMARY

1. Summary of the Resolution

The Resolution will grant accreditation to the Privacy Law certification program of the International Association of Privacy Professionals.

2. Summary of the Issue that the Resolution Addresses

To respond to a need to regulate certifying organizations, the House of Delegates adopted standards for accreditation of specialty certification programs for lawyers, and delegated to the Standing Committee the task of evaluating organizations that apply to the ABA for accreditation and reaccreditation. This Resolution acquits the Standing Committee’s obligation to review programs that seek accreditation from the House of Delegates to insure that they meet Standards promulgated by the House of Delegates.

3. Please Explain How the Proposed Policy Position will address the issue

The recommendation addresses the issue by describing the process by which the Standing Committee has examined the program proposed by the International Association of Privacy Professionals and arrived at the conclusion that it meets the ABA Standards for Specialty Certification Programs for Lawyers.

4. Summary of Minority Views or Opposition Internal and/or External to the ABA That Have Been Identified

There are no minority views. No opposition to this Resolution has been communicated.

The Section of Science and Technology Law had communicated opposition to prior versions of this resolution, principally because of the composition of the membership of the sponsoring organization, and the inadequacy of the definitions of “Privacy Law” in the program materials. But those reasons for prior opposition have been discussed with interested entities (see pages 4 and 5 of the accompanying Report), and as of the date of the submission of this Resolution and Report no formal opposition to this Resolution has been communicated to the Specialization Committee.
RESOLVED, That the American Bar Association reaccredits the Elder Law program of the National Elder Law Foundation for an additional five-year term as a designated specialty certification program for lawyers; and

FURTHER RESOLVED, That the American Bar Association extends the period of accreditation of the Medical Malpractice program and the Legal Malpractice program of the American Board of Professional Liability Attorneys, until the adjournment of the meeting of the House of Delegates in August 2018.
EXECUTIVE SUMMARY

1. Summary of the Resolution

That the American Bar Association grant reaccreditation to the Elder Law certification program of the National Elder Law Foundation. This program has been reviewed under procedures adopted by the Standing Committee on Specialization in accordance with the Standards for the Accreditation of Specialty Certification Programs for Lawyers, adopted by the House of Delegates in February 1993. Also, that the American Bar Association extend the existing period of accreditation accreditation for the Medical Professional Liability and Legal Professional Liability specialist certification programs of the American Board of Professional Liability Attorneys so that the Standing Committee on Specialization may process pending applications for reaccreditation of those programs.

2. Summary of the Issue the Resolution Addresses

To respond to a need to regulate certifying organizations, the House of Delegates adopted standards for accreditation of specialty certification programs for lawyers, and delegated to the Standing Committee the task of evaluating organizations that apply to the ABA for accreditation and reaccreditation. This Resolution acquits the Standing Committee’s obligation to periodically review programs that the House of Delegates has accredited and recommend their further reaccreditation or revocation of accreditation.

3. Explanation of How Proposed Policy Position Will Address Issue

The recommendation addresses the issue by describing the process by which the Standing Committee has examined the program administered by the National Elder Law Foundation and arrived at the conclusion that it continues to meet the ABA Standards for Specialty Certification Programs for Lawyers, and by describing the current status of the programs administered by the American Board of Professional Liability Attorneys and the need for further processing of their applications for reaccreditation.

4. Summary of Minority Views or Opposition Internal and/or External to the ABA That Have Been Identified

The Standing Committee on Specialization approved the proposed recommendation unanimously. No opposition has been identified.
RESOLVED, That the American Bar Association urges Congress and the Social
Security Administration to strengthen the safeguards and protections for all individuals
receiving benefits via the representative payee program, including, but not limited to,
appropriate eligibility determinations, improved monitoring and training of payees,
access to accounting for beneficiaries, and the appointment of an interim payee when a
payee is removed.
EXECUTIVE SUMMARY

1. **Summary of the Resolution**
   
   This resolution calls on Congress and the Social Security Administration (SSA) to strengthen the safeguards and protections for all beneficiaries – both individual and organizational - of SSA’s representative payee program.

2. **Summary of the Issue that the Resolution Addresses**
   
   Millions of Americans participate in SSA’s representative payee program. With a growing population of individuals who are elderly and/or have a disability, the need for representative payees will only increase. The program needs heightened protections and better training and oversight of payees. Transferring control over these funds, often someone’s sole income, is a serious limitation of that person’s autonomy and should only be carried out if truly necessary. It also creates the opportunity for misuse and financial exploitation. Many entities, including SSA’s Office of Inspector General, the Social Security Advisory Board, and the National Research Council of the National Academies, have called attention to SSA’s failure to sufficiently regulate representative payees and ensure beneficiaries receive their funds and are as involved in spending their benefits.

3. **Please Explain How the Proposed Policy Position will address the issue**
   
   The policy position will allow the ABA to comment on many more aspects of SSA’s representative payee program. Currently, the ABA can only comment on matters pertaining to organizational representative payees – fee for service entities that serve in a professional capacity - even though the majority of payees are individual family members, friends, guardians or service providers. Moreover, ABA policy is limited to a discussion about the need for coordination between SSA’s representative payee program and state/territorial courts. There are many more topics that warrant comment, including appropriate eligibility determinations, better monitoring and training of payees, and improved interim payee practices to ensure recipients do not lose funds.

4. **Summary of Minority Views or Opposition Internal and/or External to the ABA Which Have Been Identified**
   
   None as of this writing.
RESOLUTION

RESOLVED, That the American Bar Association supports the goal of reducing mental health and substance use disorders and improving the well-being of lawyers, judges and law students; and

FURTHER RESOLVED, That the American Bar Association urges all federal, state, local, territorial, and tribal courts, bar associations, lawyer regulatory entities, institutions of legal education, lawyer assistance programs, professional liability carriers, law firms, and other entities employing lawyers to consider the recommendations set out in the report, The Path to Lawyer Well-Being: Practical Recommendations for Positive Change, by the National Task Force on Lawyer Well-Being.
1. **Summary of the Resolution**

   The Resolution urges stakeholders to consider the recommendations set out in the report, *The Path to Lawyer Well-Being: Practical Recommendations for Positive Change*, by the National Task Force on Lawyer Well-Being.

2. **Summary of the Issue that the Resolution Addresses**

   The resolution addresses the crisis of lawyer well-being that has been documented by research conducted by the ABA Commission on Lawyer Assistance Programs. The research demonstrates that alcohol use, substance use and mental health disorders among law students and lawyers far exceed other professions and populations. These circumstances undermine the ability of the legal profession to assure the public that the system of American justice is competent, fair and just.

3. **Please Explain How the Proposed Policy Position Will Address the Issue**

   The National Task Force on Lawyer Well-Being has spent a year analyzing research and conducting outreach to craft a series of recommendations directed toward a full range of stakeholders, which, if implemented, will advance a cultural shift toward a legal profession that is better able to meet the needs of society without the burdens of alcohol and other substance use disorders or unmanaged mental health concerns.

4. **Summary of Minority Views or Opposition Internal and/or External to the ABA Which Have Been Identified**

   None.
RESOLVED, That the American Bar Association urges Congress and the President to re-authorize, raise the appropriation level of, and fully fund the Legal Assistance for Victims Grant Program of the Violence Against Women Act, 34 U.S. Code § 20121.
EXECUTIVE SUMMARY

1. **Summary of Resolution**

   The Resolution urges Congress and the President to re-authorize, raise the appropriation level of, and fully fund the Legal Assistance for Victims Grant Program of the Violence Against Women Act (34 U.S. Code § 20121).

2. **Summary of the Issue that the Resolution Addresses**

   Lack of funding for well-trained expert civil attorneys to represent victims and survivors of domestic, dating, sexual and stalking violence.

3. **Please Explain How the Proposed Policy Position Will Address the Issue**

   Urges Congress and the President to re-authorize, raise the appropriation level of, and fully fund the Legal Assistance for Victims grant program of the Violence Against Women Act,

4. **Summary of Minority Views or Opposition Internal and/or External to the ABA Which Have Been Identified**

   None to date.
RESOLVED, That the American Bar Association urges all federal courts to adopt pro bono panels for civil litigants guided by a uniform set of guidelines.
EXECUTIVE SUMMARY

1. Summary of the Resolution

This Resolution urges federal courts to adopt pro bono panels for civil litigants guided by a uniform set of guidelines.

2. Summary of the Issue that the Resolution Addresses

There are 94 federal district courts in the United States. A 2011 study conducted by the Federal Judicial Center for the Judicial Conference Committee on Court Administration and Case Management highlighted, however, that these courts do not provide uniform assistance to pro se litigants in civil cases. Of the 90 district courts that responded, only 19 (21.1% of the 90 districts that responded) disclosed that there is a “[c]ourt maintained pro bono panel or list of attorneys willing to serve pro bono, made available to pro se litigations.”

This disparity in the availability of panels, and the principles under which they operate, condition an indigent civil litigant’s ability to obtain representation, and the extent of that representation, on his or her geographic location within the United States.

3. Please Explain How the Proposed Policy Position Will Address the Issue

The Resolution urges federal courts to implement policies that would avoid geographic differences in the substance of representation available to an indigent civil litigant by removing material differences in how pro bono panels are structured and function and by creating a set of guiding principles to ensure that the purpose behind creating and maintaining such panels is effectuated even if the form of the panel varies in a particular district. The Resolution also would urge those federal districts not already participating in pro bono panel programs to create and maintain a panel consistent with the guides and principles espoused by the extant panels. If and when the federal courts follow the ABA’s urging on these issues, a litigant will not be limited by the district in which he or she happens to reside.

4. Summary of Minority Views or Opposition Internal and/or External to the ABA Which Have Been Identified

The Young Lawyers Division is not aware of any minority view or opposition to this Resolution.
RESOLVED, That the American Bar Association urges all federal, state, local, territorial, and tribal legislative bodies and governmental agencies to enact laws and adopt policies regarding the use of solitary confinement for detainees according to the following:

(1) Solitary confinement (also referred to as “segregation” or “restrictive housing”) is prohibited for individuals with Intellectual Disability or serious mental illness; the elderly; women who are pregnant, are postpartum, or recently had a miscarriage or a terminated pregnancy; and individuals whose medical conditions will be exacerbated by such confinement; and

(2) Solitary confinement should be used only in exceptional cases as a measure of last resort, where less restrictive settings are insufficient, and for no longer than is necessary to address the specific reason for placement, typically not to exceed 15 consecutive days.
EXECUTIVE SUMMARY

1. Summary of the Resolution

The resolution urges all federal, state, local, territorial, and tribal legislative bodies and governmental agencies to enact laws and adopt policies regarding the use of solitary confinement for detainees according to the following:

1. Solitary confinement (also referred to as “segregation” or “restrictive housing”) is prohibited for individuals with Intellectual Disability or serious mental illness; the elderly; women who are pregnant, are postpartum, or recently had a miscarriage or a terminated pregnancy; and individuals whose medical conditions will be exacerbated by such confinement; and

2. Solitary confinement should be used only in exceptional cases as a measure of last resort, where less restrictive settings are insufficient, and for no longer than is necessary to address the specific reason for placement, typically not to exceed 15 consecutive days.

2. Summary of the Issue that the Resolution Addresses

Concern over the circumstances under which adult detainees are held in locked facilities has been evident for years to the point where a variety of legal, social scientific, and other sources have weighed in on this issue and its deleterious impact on incarcerated persons. Various entities assert that the use of this practice violates the Eighth Amendment proscription against cruel and unusual punishment.

3. Please Explain How the Proposed Policy Position Will Address the Issue

The proposed position will allow lawyers and the ABA to continue to work with other jurisdictional officials to curtail unacceptable solitary confinement practices in all correctional facilities.

4. Summary of Minority Views or Opposition Internal and/or External to the ABA Which Have Been Identified

None.
RESOLUTION

1 RESOLVED, That the American Bar Association urges federal, state, local, territorial, and tribal legislatures to enact legislation creating a substantive right and procedures for individuals to challenge their convictions by demonstrating that forensic evidence used to obtain their convictions has been undermined or discredited by verified, accepted, and credible scientific research or technological advances.
EXECUTIVE SUMMARY

1. Summary of the Resolution

This resolution calls for jurisdictions to enact legislation that would create a mechanism for people to prove their innocence when the non-DNA forensic science used to convict has subsequently been undermined or discredited.

2. Summary of the Issue that the Resolution Addresses

Technological advances in forensic science have circumscribed the use of certain kinds of forensic evidence, and some forensic techniques are no longer used because they have been found to lack scientific validity. Jurisdictions must provide a remedy for prisoners facing convictions based on invalid scientific testimony where no DNA evidence is available to test. Such a law is necessary to create a vehicle for relief for wrongfully convicted people who would otherwise be time-barred or face extreme delays under existing post-conviction relief laws or narrowly drawn newly discovered evidence laws.

3. Please Explain How the Proposed Policy Position Will Address the Issue

This resolution calls for jurisdictions to enact legislation that would create a mechanism for people to prove their innocence when the non-DNA forensic science used to convict has subsequently been undermined or discredited.

Legislation to challenge a conviction based on a “change in science” is an opportunity to correct the harm imposed on the wrongfully convicted and the public, thereby maintaining integrity and public trust in the criminal justice system. In some instances, the revelation of the wrongful conviction might also lead to the detection of the actual perpetrator of the crime.

4. Summary of Minority Views or Opposition Internal and/or External to the ABA Which Have Been Identified.

N/A.
AMESIC BAR ASSOCIATION

CRIMINAL JUSTICE SECTION
MASSACHUSETTS BAR ASSOCIATION

REPORT TO THE HOUSE OF DELEGATES

RESOLUTION

RESOLVED, That the American Bar Association urges the United States Department of Justice to reconsider the guidelines contained in its May 10, 2017 Memorandum regarding charging and sentencing policies and to utilize the ABA Standards on the Prosecution Function (2015) in revising the guidelines;

FURTHER RESOLVED, That all prosecuting authorities should adopt and pursue charging policies that are consistent with the ABA Standards on the Prosecution Function (2015); assess each case individually to determine whether, under the totality of the circumstances, charging the most serious, readily provable offense is likely to achieve justice in the individual case; prohibit filing of charges and recidivist enhancements simply to exert leverage to induce a guilty plea, and prohibit seeking mandatory minimum sentences unless required by law or justified by such factors as: a defendant’s leadership role in the offense, use or threat of violence, significant criminal history, ties to large-scale criminal organizations or serious victim injury.
EXECUTIVE SUMMARY

1. Summary of the Resolution

   The American Bar Association calls upon the Department of Justice to reinstate its policies, by utilizing the *ABA Standards on the Prosecution Function (2015)* and permit federal prosecutors to make individualized assessments of each case and to pursue mandatory minimum sentences and recidivist enhancements only where justified by a defendant’s leadership role in the offense, use or threat of violence, significant criminal history, ties to large-scale drug trafficking organizations, or serious victim injury.

2. Summary of the Issue that the Resolution Addresses

   This Resolution addresses the new policies of Attorney General Sessions and the Department of Justice.

3. Please Explain How the Proposed Policy Position Will Address the Issue

   This Resolution calls upon the Department of Justice to re-examine their new policies, and can be used in lobbying efforts, amicus briefs, and public awareness campaigns.

4. Summary of Minority Views or Opposition Internal and/or External to the ABA Which Have Been Identified.

   None.
RESOLVED, That the American Bar Association urges federal, state, local, territorial and tribal courts to extend *Batson v. Kentucky*, 476 U.S 79 (1986), to prohibit discrimination against jurors on the basis of sexual orientation or gender identity/expression.
EXECUTIVE SUMMARY

1. Summary of the Resolution

This resolution seeks to apply the ruling in *Batson* to sexual orientation and gender identity/expression. It recognizes that any peremptory strikes used during voir dire on the basis of sexual orientation or gender identity/expression would violate the equal protection clause of the constitution and would undermine public confidence in the judiciary.

2. Summary of the Issue that the Resolution Addresses

While race, gender, and religion are protected under *Batson*, there are currently no protections against striking potential jurors on the basis of sexual orientation or gender identity/expression. This creates both discrimination in the legal field and a lack of public confidence in judicial decisions.

3. Please Explain How the Proposed Policy Position Will Address the Issue

The policy would add these two classes of people to the protected classes under *Batson*. Attorneys would therefore need to provide a reasoning for the strikes outside of a potential juror’s real or perceived sexual orientation or gender identity/expression.

4. Summary of Minority Views or Opposition Internal and/or External to the ABA Which Have Been Identified.

None
RESOLVED, That the American Bar Association urges the Executive Branch to rescind its decision to end the Deferred Action for Childhood Arrivals (DACA) program; and

FURTHER RESOLVED, That the American Bar Association urges Congress to enact legislation permitting DACA recipients and other undocumented immigrants who entered the United States as children and who meet age, residency, educational and other qualifications (“DREAMers”) who meet certain educational, work, or military requirements, successfully pass a background check, and remain in good legal standing, to apply for permanent legal status and citizenship; and

FURTHER RESOLVED, That in the absence of Congressional legislation, the American Bar Association urges the Department of Homeland Security to exercise its discretion and refrain from apprehending, detaining, or removing DREAMers, and that any exclusion based on criminal conduct be limited to specified convictions.
EXECUTIVE SUMMARY

1. Summary of the Resolution

This resolution advocates for continued use of prosecutorial discretion in a manner that prevents DHS resources from being used to apprehend, detain, and deport DREAMers and it advocates for clean, standalone, and bipartisan legislations that protects DREAMers from removal and accords them a reasonable pathway to citizenship.

2. Summary of the Issue that the Resolution Addresses

The Deferred Action for Childhood Arrivals program, commonly known as DACA, has allowed almost 800,000 immigrant youth to remain in the United States since its inception by the Obama Administration in 2012. This Presidential policy, by way of Executive Action, targeted minors who may have been brought to the country illegally or overstay their visas before the age of 16 and who applied before the age of 31. On September 5, 2017, the Trump Administration announced the termination of the program, with a complete phase out over the next couple of years. This has left the fate of approximately 800,000 DACA recipients in limbo and most likely subject to removal from the United States. The President agreed to wait for six months, or March 5, 2018, to determine whether Congress would act before making any further decisions on the fate of DACA and its recipients.

3. Please Explain How the Proposed Policy Position Will Address the Issue

This resolution will be used by the Government Affairs Office in its lobbying efforts, as well as by ABA members who wish to engage with members of Congress and the Executive Branch to advocate on behalf of the interests expressed in this resolution.

4. Summary of Minority Views or Opposition Internal and/or External to the ABA Which Have Been Identified

None known.
RESOLVED, That the American Bar Association urges the Congress to approve appropriations to the Library of Congress necessary to enable the Law Library of Congress to adequately staff, maintain, modernize, and enhance its services, collections, facilities, digital projects, and outreach efforts.
EXECUTIVE SUMMARY

1. Summary of the Resolution

This resolution urges Congress to approve continued levels of appropriations to the Library of Congress necessary to enable the Law Library of Congress to adequately staff, manage, modernize, and enhance its services, collections, facilities, digital projects, and outreach efforts.

2. Summary of the Issue that the Resolution Addresses

The resolution addresses the consistent need for adequate congressional funding for the nation’s Law Library through appropriations to its parent institution, the Library of Congress. As the representative of the nation’s legal profession, the American Bar Association must stand in support of the Law Library of Congress to ensure continued collection, preservation, and access to the vast and often unique legal resources available through the Law Library to legislators, practitioners, scholars, and law students throughout the country and across the globe.

3. Please Explain How the Proposed Policy Position Will Address the Issue

The proposed policy resolution addresses the issues by identifying current and new future needs of the LLC and stating clearly an ABA position informed by a cross-section of Association expertise.

4. Summary of Minority Views or Opposition Internal and/or External to the ABA Which Have Been Identified

None known.
RESOLUTION

RESOLVED, That the American Bar Association adopts the Model Provisions on Electronic Commerce for International Trade Agreements ("Model Provisions"), dated February 2018; and

FURTHER RESOLVED, That the American Bar Association recommends the Model Provisions as a template for international trade agreements and other relevant international agreements and guidelines.
Article 1.1: Definitions

For the purposes of this [Chapter]:

1. **computing facilities** means computer servers and storage devices for processing or storing information for commercial use;

2. **covered person** means:
   
   (a) a covered investment as defined in Article [x.1 (Definitions)];
   
   (b) an investor of a Party as defined in Article [x.1 (Definitions)]; or
   
   (c) a service supplier of a Party as defined in Article [x.1 (Definitions)];

3. **digital product** means a computer program, text, video, image, sound recording or other product that is digitally encoded, produced for commercial sale or distribution, and that can be transmitted electronically,\(^1\),\(^2\)

4. **electronic authentication** means the process or act of verifying the identity of a party to an electronic communication or transaction or ensuring the integrity of an electronic communication;

5. **electronic transmission** or **transmitted electronically** means a transmission made using any electromagnetic means, including by photonic means;

6. **personal information** means any information, including data, about an identified or identifiable natural person;

7. **trade administration documents** means forms issued or controlled by a Party that must be completed by or for an importer or exporter in connection with the import or export of goods; and

8. **unsolicited commercial electronic message** means an electronic message which is sent for commercial or marketing purposes to an electronic address, without the consent of the recipient or despite the explicit rejection of the recipient, through an Internet access service supplier or, to the extent provided for under the laws and regulations of each Party, other telecommunications service.

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\(^1\) For greater certainty, digital product does not include a digitized representation of a financial instrument, including money.

\(^2\) The definition of digital product should not be understood to reflect a Party’s view on whether trade in digital products through electronic transmission should be categorized as trade in services or trade in goods.
Article 1.2: Scope and General Provisions

1. This Chapter shall apply to measures adopted or maintained by a Party that affect trade by electronic means.

2. This Chapter shall not apply to:
   (a) government procurement, provided a Party notifies other Parties to the extent the above exclusion applies; or
   (b) information held or processed by or on behalf of a Party, or measures related to such information, including measures related to its collection.

Article 1.3: Customs Duties

1. No Party shall impose customs duties on electronic transmissions, including content transmitted electronically, between a person of one Party and a person of another Party.

2. For greater certainty, paragraph 1 shall not preclude a Party from imposing internal taxes, fees or other charges on content transmitted electronically, provided that such taxes, fees or charges are imposed in a manner consistent with this Agreement and on a non-discriminatory basis.

Article 1.4: Non-Discriminatory Treatment of Digital Products

1. No Party shall accord less favorable treatment to digital products created, produced, published, contracted for, commissioned or first made available on commercial terms in the territory of another Party, or to digital products of which the author, performer, producer, developer or owner is a person of another Party, than it accords to other like digital products.³

2. This Article shall not apply to broadcasting.

Article 1.5: Domestic Electronic Transactions Framework


2. Each Party shall endeavor to:

³ For greater certainty, to the extent that a digital product of a non-Party is a “like digital product”, it will qualify as an “other like digital product” for the purposes of this paragraph.
⁴ For greater certainty, transacting parties to commercial arrangements covered by the ECC can continue to enforce rights thereunder directly, separate from government to government dispute provisions common to trade agreements.
(a) avoid any unnecessary regulatory burden on electronic transactions; and

(b) facilitate input by interested persons in the development of its legal framework for electronic transactions.

**Article 1.6: Electronic Authentication and Electronic Signatures**

1. Except in circumstances otherwise provided in its law, a Party or person subject to its jurisdiction shall not deny the legal validity of a signature solely on the basis that the signature is in electronic form.

2. No Party shall adopt or maintain measures for electronic authentication that would:

   (a) Prohibit parties to an electronic transaction from mutually determining the appropriate authentication methods for that transaction; or

   (b) prevent parties to an electronic transaction from having the opportunity to establish before judicial or administrative authorities the signature of a transacting party, or that their transaction complies with any legal requirements with respect to authentication.

3. Notwithstanding paragraph 2, a Party may require that, for a particular category of transactions, the method of authentication meet certain performance standards or is certified by an authority accredited in accordance with its law.

4. The Parties shall encourage the use of interoperable electronic authentication.

**Article 1.7: Online Consumer Protection**

1. The Parties recognize the importance of adopting and maintaining transparent and effective measures to protect consumers from fraudulent and deceptive commercial activities as referred to in [any applicable Consumer Protection provision in this trade agreement] when they engage in electronic commerce.

2. Each Party shall adopt or maintain consumer protection laws to proscribe fraudulent and deceptive commercial activities that cause harm or potential harm to consumers engaged in online commercial activities.

**Article 1.8: Personal Information Protection**

1. The Parties recognize the economic and social benefits of protecting the personal information of users of electronic commerce and the contribution that this makes to enhancing consumer confidence in electronic commerce.

2. To this end, each Party shall adopt or maintain a legal framework that provides for the protection of the personal information of the users of electronic commerce. In the development of its legal framework for the protection of personal information, each
Party should take into account principles and guidelines of relevant international bodies.5

3. Each Party shall endeavor to adopt non-discriminatory practices in protecting users of electronic commerce from personal information protection violations occurring within its jurisdiction.

4. Each Party should publish information on the personal information protections it provides to users of electronic commerce, including how:
   (a) individuals can pursue remedies; and
   (b) business can comply with any legal requirements.

5. Recognizing that the Parties may take different legal approaches to protecting personal information, each Party should encourage the development of mechanisms to promote compatibility between these different regimes. These mechanisms may include the recognition of regulatory outcomes, whether accorded autonomously or by mutual arrangement, or broader international frameworks. To this end, the Parties shall endeavor to exchange information on any such mechanisms applied in their jurisdictions and explore ways to extend these or other suitable arrangements to promote compatibility between them.

**Article 1.9: Paperless Trading**

Each Party shall endeavor to:

(a) make trade administration documents available to the public in electronic form; and

(b) accept trade administration documents submitted electronically as the legal equivalent of the paper version of those documents.

**Article 1.10: Principles on Access to and Use of the Internet for Electronic Commerce**

Subject to applicable policies, laws and regulations, the Parties recognize the benefits of consumers in their territories having the ability to:

(a) access and use services and applications of a consumer’s choice available on the Internet, subject to reasonable network management;6

5 For greater certainty, a Party may comply with the obligation in this paragraph by adopting or maintaining measures such as a comprehensive privacy, personal information or personal data protection laws, sector-specific laws covering privacy, or laws that provide for the enforcement of voluntary undertakings by enterprises relating to privacy.

6 The Parties recognize that an Internet access service supplier that offers its subscribers certain content on an exclusive basis would not be acting contrary to this principle.
(b) connect the end-user devices of a consumer’s choice to the Internet, provided that such devices do not harm the network; and
(c) access information on the network management practices of a consumer’s Internet access service supplier.

Article 1.11: Cross-Border Transfer of Information by Electronic Means

1. The Parties recognize that each Party may have its own regulatory requirements concerning the transfer of information by electronic means.
2. Each Party shall allow the cross-border transfer of information by electronic means, including personal information, when this activity is for the conduct of the business of a covered person, subject to applicable agreements between the Parties, and laws and regulations of the Parties.

Article 1.12: Internet Interconnection Charge Sharing

The Parties recognize that a supplier seeking international Internet connection should be able to negotiate with suppliers of another Party on a commercial basis. These negotiations may include negotiations regarding compensation for the establishment, operation and maintenance of facilities of the respective suppliers.

Article 1.13: Location of Computing Facilities

1. The Parties recognize that each Party may have its own regulatory requirements regarding the use of computing facilities, including requirements that seek to ensure the security and confidentiality of communications.
2. No Party shall require a covered person to use or locate computing facilities in that Party’s territory as a condition for conducting business in that territory.

Article 1.14: Unsolicited Commercial Electronic Messages

1. Each Party shall adopt or maintain measures regarding unsolicited commercial electronic messages that:
   (a) require suppliers of unsolicited commercial electronic messages to facilitate the ability of recipients to prevent ongoing reception of those messages;
   (b) require the consent, as specified according to the laws and regulations of each Party, of recipients to receive commercial electronic messages; or
   (c) otherwise provide for the minimization of unsolicited commercial electronic messages.
2. Each Party shall provide recourse against suppliers of unsolicited commercial electronic messages that do not comply with the measures adopted or maintained to paragraph 1.

3. The Parties shall endeavor to cooperate in appropriate cases of mutual concern regarding the regulation of unsolicited commercial electronic messages.

**Article 1.15: Cooperation**

Recognizing the global nature of electronic commerce, the Parties shall endeavor to:

(a) work together to assist Small and Medium-Sized Enterprises (SMEs), including micro business owners, to overcome obstacles to its use;

(b) exchange information and share experiences on regulations, policies, enforcement and compliance regarding electronic commerce, including:

   (i) personal information protection;

   (ii) online consumer protection, including means for consumer redress and building consumer confidence;

   (iii) unsolicited commercial electronic messages;

   (iv) security in electronic communications;

   (v) authentication; and

   (vi) e-government;

(c) exchange information and share views on consumer access to products and services offered online among the Parties;

(d) participate actively in regional and multilateral fora to promote the development of electronic commerce; and

(e) encourage development by the private sector of methods of self-regulation that foster electronic commerce, including codes of conduct, model contracts, guidelines and enforcement mechanisms.

**Article 1.16: Cooperation on Cybersecurity Matters**

The Parties recognize the importance of:

(a) building the capabilities of their national entities responsible for computer security incident response; and

(b) using existing collaboration mechanisms to cooperate to identify and mitigate malicious intrusions or dissemination of malicious code that affect the electronic networks of the Parties.
Article 1.17: Source Code

1. No Party shall require the transfer of, or access to, source code of software owned by a person of another Party, as a condition for the import, distribution, sale or use of such software, or of products containing such software, in its territory.

2. Nothing in this Article shall preclude the inclusion or implementation of terms and conditions related to the provision of source code in commercially negotiated contracts; or

3. This Article shall not be construed to affect requirements that relate to patent applications or granted patents, including any orders made by a judicial authority in relation to patent disputes, subject to safeguards against unauthorized disclosure under the law or practice of a Party.
EXECUTIVE SUMMARY

1. Summary of the Resolution


2. Summary of the Issue that the Resolution Addresses

This resolution supports modernization and uniformity of the regulation of electronic commerce, including business data flows from one country to another country. The ability of companies and consumers to move data has become paramount in promoting, fostering, and expanding commerce and services around the globe. It also urges the American Bar Association to adopt the Model Provisions as a template for international trade agreements, and other relevant international agreements and guidelines.

3. Please Explain How the Proposed Policy Position Will Address the Issue

The Resolution enables the ABA to urge the United States and other governments to adopt the ABA Model Provisions on Electronic Commerce as an effective and efficient means to promote the modernization and uniformity of provisions for electronic commerce, including cross-border data flow, in international trade agreements and other international agreements and guidelines.

4. Summary of Minority Views or Opposition Internal and/or External to the ABA Which Have Been Identified

None.
AMERICAN BAR ASSOCIATION

DEATH PENALTY DUE PROCESS REVIEW PROJECT
SECTION OF CIVIL RIGHTS AND SOCIAL JUSTICE

REPORT TO THE HOUSE OF DELEGATES

RESOLUTION

1 RESOLVED, That the American Bar Association, without taking a position supporting or
2 opposing the death penalty, urges each jurisdiction that imposes capital punishment to
3 prohibit the imposition of a death sentence on or execution of any individual who was 21
4 years old or younger at the time of the offense.
EXECUTIVE SUMMARY

1. **Summary of the Resolution**

   This resolution urges each death penalty jurisdiction to not execute or sentence to death anyone who was 21 years old or younger at the time of the offense.

2. **Summary of the Issue that the Resolution Addresses**

   This resolution addresses the practice of sentencing to death and executing young persons ages 21 and under. The resolution clarifies that the ABA’s long-standing position on capital punishment further necessitates that jurisdictions categorically exempt offenders ages 21 and under from capital punishment due to the lessened moral culpability, immaturity, and capacity for rehabilitation exemplified in late adolescence.

3. **Please Explain How the Proposed Policy Position Will Address the Issue**

   The resolution aims to accomplish this goal by consulting on issues related to young offenders and the death penalty when called upon to do so by judges, lawyers, government entities, and bar associations, by supporting the filing of amicus briefs in cases that present issues of youthfulness and capital punishment, and by conducting and publicizing reports of jurisdictional practices vis-à-vis the imposition of death on late adolescent offenders for public information and use in the media and advocacy communities.

4. **Summary of Minority Views or Opposition Internal and/or External to the ABA Which Have Been Identified**

   None.
RESOLVED, That the American Bar Association approves the Revised Uniform Unclaimed Property Act, promulgated by the National Conference of Commissioners on Uniform State Laws (Uniform Law Commission), as an appropriate Act for those states desiring to adopt the specific substantive law suggested therein.
EXECUTIVE SUMMARY

1. Summary of the Resolution

That the American Bar Association approves the Revised Uniform Unclaimed Property Act promulgated by the National Conference of Commissioners on Uniform State Laws (Uniform Law Commission) in July 2016 as an appropriate Act for those states desiring to adopt the specific substantive law suggested therein.

2. Summary of the Issue that the Resolution Addresses

The Uniform Law Commission first drafted uniform state legislation on unclaimed property in 1954. Since then, revisions have been promulgated in 1981 and again in 1995. Many technological developments in recent years as well as new types of potential unclaimed property, such as gift cards, are not addressed in the most current uniform act. The Revised Uniform Unclaimed Property Act updates provisions on numerous issues, including escheat of gift cards and other stored-value cards, life insurance benefits, securities, dormancy periods, and use of contract auditors.

3. Please Explain How the Proposed Policy Position Will Address the Issue

Approval of the Revised Uniform Unclaimed Property Act by the American Bar Association House of Delegates would demonstrate to states that the Act is an appropriate approach for addressing the issues described above.

4. Summary of Minority Views or Opposition Internal and/or External to the ABA Which Have Been Identified

A variety of views were expressed during the drafting process, and compromises were reached. The ULC has become aware that a subcommittee of the ABA Business Law Section may draft its own model act in the area of unclaimed property.
AMERICAN BAR ASSOCIATION
NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS
REPORT TO THE HOUSE OF DELEGATES

RESOLUTION

RESOLVED, That the American Bar Association approves the Uniform Directed Trust Act, promulgated by the National Conference of Commissioners on Uniform State Laws (Uniform Law Commission), as an appropriate Act for those states desiring to adopt the specific substantive law suggested therein.
EXECUTIVE SUMMARY

1. Summary of the Resolution

That the American Bar Association approves the Uniform Directed Trust Act, promulgated by the National Conference of Commissioners on Uniform State Laws (Uniform Law Commission), as an appropriate Act for those states desiring to adopt the specific substantive law suggested therein.

2. Summary of the Issue that the Resolution Addresses

The trustee of a typical trust has many duties, including custody of assets, administration, investment management, and distribution to beneficiaries. The modern trend is to divide these duties among multiple specialists, but the law of trusts is unclear as to the allocation of fiduciary responsibilities among multiple parties. This new uniform act provides clear default rules to ensure beneficiaries remain protected and each party is responsible for its own actions.

3. Please Explain How the Proposed Policy Position Will Address the Issue

Approval of the Uniform Directed Trust Act by the ABA House of Delegates would help demonstrate to state legislatures that the Act is an appropriate approach for addressing the issues described above.

4. Summary of Minority Views or Opposition Internal and/or External to the ABA Which Have Been Identified

None Known.
RESOLVED, That the American Bar Association approves the Uniform Guardianship, Conservatorship, and Other Protective Arrangements Act, promulgated by the National Conference of Commissioners on Uniform State Laws (Uniform Law Commission), as an appropriate Act for those states desiring to adopt the specific substantive law suggested therein.
EXECUTIVE SUMMARY

1. Summary of the Resolution

That the American Bar Association approves the Uniform Guardianship, Conservatorship, and Other Protective Arrangements Act, promulgated by the National Conference of Commissioners on Uniform State Laws (Uniform Law Commission), as an appropriate Act for those states desiring to adopt the specific substantive law suggested therein.

2. Summary of the Issue that the Resolution Addresses

Updates the current outdated uniform law governing guardianship and conservatorship by implementing policies and best practices recommended at the Third National Summit on Guardianship in 2011.

3. Please Explain How the Proposed Policy Position Will Address the Issue

Approval of the Uniform Guardianship, Conservatorship, and Other Protective Arrangements Act by the ABA House of Delegates would help demonstrate to state legislatures that the Act is an appropriate approach for addressing the issues described above.

4. Summary of Minority Views or Opposition Internal and/or External to the ABA Which Have Been Identified

None Known.
RESOLVED, That the American Bar Association approves the Uniform Parentage Act (2017), promulgated by the National Conference of Commissioners on Uniform State Laws (Uniform Law Commission), as an appropriate Act for those states desiring to adopt the specific substantive law contained in the act.
EXECUTIVE SUMMARY

1. Summary of the Resolution

That the American Bar Association approves the Uniform Parentage Act (2017), promulgated by the National Conference of Commissioners on Uniform State Laws (Uniform Law Commission), as an appropriate Act for those states desiring to adopt the specific substantive law contained in the act.

2. Summary of the Issue that the Resolution Addresses

The Uniform Parentage Act (2017) provides states with a uniform legal framework for establishing parent-child relationships. This act updates prior versions of the UPA, last revised in 2002.

3. Please Explain How the Proposed Policy Position Will Address the Issue

Approval of the Uniform Parentage Act (2017) by the American Bar Association House of Delegates would demonstrate to states that the Act is an appropriate approach for addressing the issues described above.

4. Summary of Minority Views or Opposition Internal and/or External to the ABA Which Have Been Identified

None known.
RESOLVED, That the American Bar Association approves the Uniform Protected Series Act, promulgated by the National Conference of Commissioners on Uniform State Laws (Uniform Law Commission), as an appropriate act for those states desiring to adopt the specific substantive law suggested therein.
EXECUTIVE SUMMARY

1. **Summary of the Resolution**

That the American Bar Association approves the Uniform Protected Series Act promulgated by the National Conference of Commissioners on Uniform State Laws (Uniform Law Commission) in July 2017 as an appropriate Act for those states desiring to adopt the specific substantive law suggested therein.

2. **Summary of the Issue that the Resolution Addresses**

The Uniform Protected Series Act provides a comprehensive framework for the formation and operation of a protected series limited liability company. A protected series LLC has both “horizontal” liability shields, as well as the standard “vertical” liability shield. All modern business entities provide the traditional, “vertical” shield – protecting the entity’s owners (and their respective assets) from automatic, vicarious liability for the entity’s debts. A “series” limited liability company provides “horizontal” shields – protecting each protected series (and its assets) from automatic, vicarious liability for the debts of the company and for the debts of any other protected series of the company. A horizontal shield likewise protects the series limited liability company (and its assets) from creditors of any protected series of the company. About 15 jurisdictions have some kind of series statute, but they vary widely. The act integrates into any existing LLC act, whether it is the Uniform Limited Liability Company Act or not.

3. **Please Explain How the Proposed Policy Position Will Address the Issue**

Approval of the Uniform Protected Series Act by the American Bar Association House of Delegates would demonstrate to states that the act is an appropriate approach for addressing the issues described above.

4. **Summary of Minority Views or Opposition Internal and/or External to the ABA Which Have Been Identified**

None known.
RESOLVED, That the American Bar Association approves the Uniform Regulation of Virtual-Currency Businesses Act, promulgated by the National Conference of Commissioners on Uniform State Laws (Uniform Law Commission), as an appropriate Act for those states desiring to adopt the specific substantive law suggested therein.
EXECUTIVE SUMMARY

1. Summary of the Resolution

That the American Bar Association approves the Uniform Regulation of Virtual-Currency Businesses Act promulgated by the National Conference of Commissioners on Uniform State Laws (Uniform Law Commission) in July 2017 as an appropriate Act for those states desiring to adopt the specific substantive law suggested therein.

2. Summary of the Issue that the Resolution Addresses

The Uniform Regulation of Virtual-Currency Businesses Act creates a statutory framework for regulating companies engaged in virtual-currency business activity. Currently, legal gray areas exist for companies engaging in virtual-currency business activity and there is no uniformity from one state to the next. The Act provides clarity to both regulators and businesses, encourages innovation, and protects consumers utilizing virtual currencies.

3. Please Explain How the Proposed Policy Position Will Address the Issue

Approval of the Uniform Regulation of Virtual-Currency Businesses Act by the American Bar Association House of Delegates would demonstrate to states that the Act is an appropriate approach for addressing the issues described above.

4. Summary of Minority Views or Opposition Internal and/or External to the ABA Which Have Been Identified

None known.
RESOLVED, That the American Bar Association supports the development of integrated, systemic approaches within administrative, civil, and criminal court contexts to address the special needs of youth and young adults experiencing homelessness.

FURTHER RESOLVED, That the American Bar Association urges lawmakers at federal, state, local, territorial and tribal levels to work with the legal profession to:

1. promote and support efforts to identify and address the unmet legal needs of unaccompanied minors and young adults experiencing or at risk of experiencing homelessness, including ensuring that all youth experiencing homelessness have access to a lawyer;

2. encourage the development of specialized legal services programs, pro bono projects and law school legal clinics;

3. collaborate in the identification and removal of legal barriers for homeless children and youth to benefits, education, employment, housing, identification, treatment and other services;

4. review and revise laws, regulations, policies, practices and systems of care that may act as legal barriers; and

5. implement preventive strategies such as pre-booking diversion programs, expungement and/or sealing of juvenile and criminal records, and alternatives to the criminalization of child and youth homelessness.

FURTHER RESOLVED, That youth and young adults experiencing or at risk of experiencing homelessness should have input where appropriate, in efforts to increase access to justice; and

FURTHER RESOLVED, That the American Bar Association urges federal, state, local, territorial and tribal governments as well as the legal community and public and private funders to financially support these efforts.
EXECUTIVE SUMMARY

1. Summary of the Resolution

The American Bar Association supports the development of integrated, systemic approaches within administrative, civil, and criminal court contexts to address the special needs of youth and young adults experiencing homelessness.

2. Summary of the Issue that the Resolution Addresses

Youth and young adults experiencing homelessness often encounter legal barriers to benefits, education, employment, housing, identification, treatment and services. The bench and the bar are in a unique position to help address the circumstances that lead to and prolong homelessness in a wide range of ways, from ensuring access to education and assisting with record expungement to open doors to employment, to fighting housing discrimination and helping youth access basic necessities like food and identification documents. In addition to enforcing existing law, lawyers and lawmakers can craft new policies to minimize the barriers that can lead to homelessness or to help young people exit homelessness quickly and permanently.

3. Please Explain How the Proposed Policy Position Will Address the Issue

This recommendation would enhance the Association’s efforts to foster the creation of integrated, systemic approaches to address the special legal needs of youth and young adults experiencing homelessness by providing not only a call to action to the lawmakers and the legal community that is specific to youth and young adults experiencing homelessness, but also highlights the critical components to successfully improving outcomes for this vulnerable population—through integrated, systemic approaches and increased funding.

4. Summary of Minority Views or Opposition Internal and/or External to the ABA Which Have Been Identified

None to date
RESOLVED, That the American Bar Association urges federal, state, local, territorial and tribal governments to provide legal counsel as a matter of right at public expense to low-income persons in all proceedings that may result in a loss of physical liberty, regardless of whether the proceedings are: a) criminal or civil; or b) initiated or prosecuted by a government entity;

FURTHER RESOLVED, That no court should accept an in-court waiver of the right to appointed counsel in a case that may result in a loss of physical liberty unless the person has had the opportunity to confer with a lawyer; and

FURTHER RESOLVED, That a person who has waived appointed counsel should be offered appointed counsel at each subsequent stage of the proceedings at which the person appears without counsel.
EXECUTIVE SUMMARY

1. **Summary of the Resolution**

   Urges that legal counsel be provided at public expense to low-income persons in all proceedings that may result in a loss of physical liberty, regardless of whether the proceedings are: a) criminal or civil; or b) initiated and/or prosecuted by a government entity. Further, urges that waivers of the right to counsel at all stages of such proceedings should only be accepted after the person has had an opportunity to confer with counsel, and that a person who has waived appointed counsel should be offered appointed counsel at each subsequent stage of the proceedings at which the person appears without counsel.

2. **Summary of the Issue that the Resolution Addresses**

   Currently, in many proceedings denominated as “civil” in nature, counsel is not provided as a matter of right, resulting in the incarceration of numerous individuals who never have the opportunity to consult an attorney. Moreover, criminal defendants may be deprived of counsel when they are threatened with incarceration, up to the point where actual incarceration is imposed.

3. **Please Explain How the Proposed Policy Position Will Address the Issue**

   The policy will provide a foundation in ABA policy for advocacy in courts, legislatures and other fora to address the lack of counsel in proceedings that may result in incarceration for “civil” infractions, as well as in criminal proceedings where incarceration is threatened.

4. **Summary of Minority Views or Opposition Internal and/or External to the ABA Which Have Been Identified**

   None known.
RESOLVED, That the American Bar Association urges federal, state, territorial, and tribal
governments to adopt or preserve tax code provisions that allow the alimony deduction for
payors and treats alimony as taxable income to payees.
EXECUTIVE SUMMARY

1. Summary of the Resolution
   The Resolution urges Congress to remove the elimination of the tax deduction for alimony payments in the proposed Tax Cuts and Jobs Act of 2017 (H.R. 1).

2. Summary of the Issue that the Resolution Addresses
   On November 2, 2017, the US House Ways and Means Committee released the Tax Cuts and Jobs Act, which is the House’s proposal to overhaul the federal tax code. Among the many tax deductions that the House proposes to eliminate from the federal tax code is the deduction for alimony payments. Alimony is often relied upon to provide ongoing financial support to the lower income spouse following a divorce. The alimony deduction enables divorced families to be able to support two households on the same income that married couples use to support one household by shifting the income to the spouse in a lower tax bracket. Without the alimony deduction, there will be a larger portion of the income going to the government and a smaller portion of the income to be allocated between two households. There is significant concern amount the family law bar that the elimination of the alimony deduction from the new tax code will have a chilling effect on divorce settlements; will result in lower alimony awards; and will have a negative effect on divorced families.

3. Please Explain How the Proposed Policy Position will address the issue
   This Resolution recommends that Congress not eliminate the alimony deduction as part of the Tax Cuts and Jobs Act as it may have a negative effect on divorce settlements.

4. Summary of Minority Views
   None.
RESOLVED, That the American Bar Association adopts the *ABA Model Act Governing Assisted Reproductive Technology*, dated February 2018 ("2018 Model Act") to replace the 2008 *ABA Model Act Governing Assisted Reproductive Technology*; and

FURTHER RESOLVED, That the American Bar Association urges appropriate governmental agencies to adopt the 2018 Model Act.
AMERICAN BAR ASSOCIATION
MODEL ACT GOVERNING
ASSISTED REPRODUCTIVE TECHNOLOGY [2018]

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ARTICLE 1. GENERAL PROVISIONS

SECTION 101. SHORT TITLE

This Act is entitled the 2018 Model Act Governing Assisted Reproductive Technology.

SECTION 102. DEFINITIONS

1. “ART Storage Facility” means a licensed facility that stores reproductive, biological, or genetic material used in Assisted Reproductive Technology, and is in compliance with the Fertility Clinic and Certification and Success Rate Act of 1992 (FCSRCA, or Public Law 102-493).

2. “Assisted Reproduction” means a method of causing pregnancy through means other than by sexual intercourse. In the foregoing context, the term includes, but is not limited to:
   (a) Intrauterine insemination;
   (b) Donation of eggs or sperm;
   (c) Donation of Embryos;
   (d) In vitro fertilization and Transfer of Embryos; and
   (e) Intracytoplasmic sperm injection.

3. “Assisted Reproductive Technology” (“ART” as used in this Act) means any medical or scientific intervention, provided with the intent of having a Child.

4. “Child” means an individual born pursuant to ART whose parentage may be determined under this Act or other law.

5. “Collaborative Reproduction” involves any Assisted Reproduction in which an individual other than an intended parent provides genetic material or agrees to act as a Gestational or Genetic Surrogate.

6. “Compensation” means payment of any valuable consideration for time, effort, pain and/or risk to health in excess of reasonable medical and ancillary costs.

7. “Consultation” means a meeting with a licensed professional for the purpose of educating the participants about the effects and potential consequences of their participation in any ART procedure.

8. “Court” means the appropriate court with competent jurisdiction as determined by the State.

9. “Donor” means an individual, including an Embryo Donor, who provides gametes for Assisted Reproduction. The term does not include: (a) an intended parent who provides gametes to be used for Assisted Reproduction; (b) a woman who gives birth to a Child by means of Assisted Reproduction except as otherwise provided in Article 6; (c) a parent under Article 6 or an intended parent under Article 7; or (d) an individual who consents in a record or a written agreement to provide gametes for Assisted Reproduction.
10. “Embryo” means a fertilized egg that has the potential to develop into a fetus if transferred into a uterus.

11. “Embryo Donor” means an individual who transfers ownership of an Embryo to another and relinquishes all parental rights of and obligations to the resulting Child.

12. “Embryo Transfer” (also referred to herein as “Transfer”) means the placement of an Embryo into the uterus.

13. “Escrow Account” means an independent, insured, bonded escrow depository maintained by a licensed, independent, bonded escrow company; or an insured and bonded trust account maintained by an attorney.

(a) For purposes of this section, a non-attorney ART Agency may not have a financial interest in any escrow company holding client funds. A non-attorney ART Agency and any of its officers, managers, owners of more than 5% ownership interest, directors or employees shall not be an agent of any escrow company holding client funds; and

(b) Client funds may only be disbursed by the attorney or Escrow Agent as set forth in the assisted reproduction agreement and the fund management agreement between the Intended Parent(s) and the Escrow Account holder.


15. “Gamete” means a cell containing a haploid complement of DNA that has the potential to form an Embryo when combined with another Gamete. Sperm and eggs are Gametes. A Gamete may consist of nuclear DNA from one human being combined with the cytoplasm, including cytoplasmic DNA, of another human being.

16. “Gamete Provider” means an individual who provides sperm or eggs for use in Assisted Reproduction.

17. “Genetic Surrogate” means an adult, not an Intended Parent, who enters into a Surrogacy Agreement to bear a Child and who is a Gamete Provider for the Child.

18. “Genetic Surrogacy Agreement” is a written contract between Intended Parent(s) and a Genetic Surrogate.

19. “Genetic Surrogacy Arrangement” means the process by which a Genetic Surrogate intends to carry and give birth to a Child.

20. “Gestational Surrogate” means an adult, not an Intended Parent, who enters into a Surrogacy Agreement to bear a Child and who is not a Gamete Provider for the Child.

21. “Gestational Surrogacy Agreement” is a written contract between Intended Parent(s) and a Gestational Surrogate.
22. “Gestational Surrogacy Arrangement” means the process by which a Gestational Surrogate intends to carry and give birth to a Child.

23. “Intended Parent” means an individual who intends to be legally bound as a parent of the Child.

24. “Legal Spouse” means an individual married to another.

25. “Medical Evaluation” means a Consultation with and an evaluation by a physician meeting the requirements of Section 903.

26. “Medical Information” means any protected individually identifiable health information obtained by a health care provider in the course of Medical Evaluation, Consultation, diagnosis, or treatment.

27. “Mental Health Counseling” means additional Consultation(s) after an initial Consultation for the purpose of advising and supporting the participant throughout the implementation of any ART procedure.

28. “Mental Health Evaluation” means a Consultation with and an evaluation by a mental health professional meeting the requirements of Section 301.

29. “Parent” means an individual who has established a Parent-Child Relationship under this Act or other applicable law.

30. “Parent-Child Relationship” means the legal relationship between the Child and a Parent of the Child. The term includes a mother-child relationship and/or the father-child relationship.

31. “Participant” means an Intended Parent, Donor, Gestational or Genetic Surrogate and their Legal Spouse, if applicable, who is involved in Assisted Reproduction under this Act.

32. “Patient” means an individual participating in Assisted Reproduction under the direction of a Provider.

33. “Physician” means an individual licensed to practice medicine.

34. “Provider” means an individual, including all medical, psychological, or counseling professionals: (a) licensed to administer health care; (b) who is qualified under this Act to provide ART services; and (c) has a Provider-Patient relationship with a Participant. Any professional corporation or corporation licensed by the State to provide health care, of which a Provider is an owner or employee, is also a Provider.

35. “Record” means information inscribed in a tangible medium or stored in an electronic or other medium that is retrievable in perceivable form.

36. “Retrieval” means the procurement of eggs or sperm from a Gamete Provider.
37. “State” means a State of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

38. “Surrogacy Agreement” is a written contract between Intended Parent(s) and a Gestational or Genetic Surrogate.

39. “Surrogacy Arrangement” means the process by which a Gestational or Genetic Surrogate intends to carry and give birth to a Child.

**ARTICLE 2. INFORMED CONSENT**

**SECTION 201. INFORMED CONSENT STANDARDS**

1. Informed consent must be provided by all Participants prior to the commencement of Assisted Reproduction.

2. Informed consent requires that all of the following be provided to all Participants orally and in a Record that meets the requirements of Section 202:

   (a) A statement that the Patient retains the right to withhold or withdraw consent at any time prior to Transfer of Gametes or Embryos without affecting the right to future care or treatment or risking the loss or withdrawal of any program benefits to which the Patient would otherwise be entitled.

   (b) A statement that the clinic retains the right to withdraw for reasonable justification and with reasonable notice.

   (c) A statement that the Donor’s, right to withhold or withdraw consent to fertilization terminates upon Retrieval of his or her Gametes, subject only to the terms of any prior agreement in a Record pursuant to Article 5.

   (d) A statement of the known, potential medical and procedural risks and benefits of ART. Such description shall include the inherent risk of Embryo loss due to aneuploidy, thawing, and failure of implantation; the risks associated with the use of hormones and other drugs that may be used; the procedural risks associated with egg Retrieval and/or other ART procedures; the incidence of, and risks regarding, multiple pregnancies and selective reduction; and the incidence and risk of birth defects associated with IVF.

   (e) A statement of acknowledgement that alternative therapies and options have been discussed in detail.

   (f) A statement that the Patient shall be informed that there may be foreseen or unforeseen legal consequences and that independent legal representation is advisable and may be required by this Act or by State law.
(g) A statement describing all existing confidentiality protections.

(h) A statement of guarantee that a Patient, whether a Donor, Intended Parent, Gestational Surrogate or Genetic Surrogate (a Participant), has access to all of his/her Medical Information to the extent allowed by applicable law and not otherwise waived by the Participant. The Patient may have to pay a fee for copies of the Record.

(i) A statement that the Intended Parent has a right to access a summary of medical and psychological information about Donors and Gestational or Genetic Surrogates as described in this Act.

(j) A statement that the release of any Participant-identifiable information, including images, shall not occur without the consent of the Participant in a Record.

(k) A statement that the Intended Parent(s) or an Embryo Donor, not the clinic or ART Storage Facility, has the right to possession and control of their Embryos, subject to any prior agreement in a Record or as provided in Section 504.

(l) A statement of the need for Intended Parents to agree in advance who shall acquire the right to possession and control of the Embryos or Gametes in the event of marriage dissolution or separation of the Intended Parents, death of one or both of them, or subsequent disagreement over disposition in compliance with the provisions of Section 501 of this Act.

(m) The policy of the provider regarding the number of Embryos Transferred and any limitation on the number of Embryos Transferred, as well as the existence of national guidelines as published by the ASRM and SART.

(n) A statement of the need for Participants to decide whether the Embryos or Gametes can be used for purposes other than Assisted Reproduction.

(o) Signed in presence of member of staff or notary.

SECTION 202. RECORD AUTHORIZATION REQUIRED

1. The provider must document informed consent in a Record for each Participant that must:

(a) Be in plain language;

(b) Be dated and signed by the provider and by the Participant in the presence of a member of the staff of the provider or before a notary;

(c) If Collaborative Reproduction is utilized, a Record that the parties have entered into a signed legal agreement with independent legal representation between the intended Parent(s) and the Donor(s) and/or Gestational Carrier and her Legal Spouse, if any, prior to the start of any medications.
(d) Include Legal Clearance as part of the medical record. There shall be a statement of Legal Clearance in a Record clarifying parental rights of all Participants following a legal Consultation regarding the same. Parental rights vary between states and may involve complex legal issues involving statutory and case law.

(e) State that disclosures have been made pursuant to this Act;

(f) Specify the length of time the consent remains valid; and

(g) Advise the party signing the informed consent document of the right to receive a copy of the Record.

2. The Record(s) must be executed in accordance with this Act before informed consent is valid or the commencement of any Assisted Reproduction.

3. The Record required in paragraph 1 of this Section shall become part of the medical record.

SECTION 203. DISCLOSURES

1. Disposition of preserved Embryos: Prior to each Retrieval, a Provider must disclose to all Intended Parents and Donors, whose identity is known to the Provider, the following possible dispositions of Embryos:

   (a) Storage, including length of time, costs, and location;

   (b) Transfer;

   (c) Donation:

      (i) To a known individual for Transfer;

      (ii) To an anonymous individual for Transfer, either directly or through the provider, or through a third party Embryo donation program;

      (iii) For scientific or clinical research, including the institution conducting the research and the intended nature of the research, if known, subject to any agreement in a Record as provided in Section 502; or

   (d) Destruction.

2. Right to transport. A Provider is not required to offer all possible dispositions, but the provider must inform the Patient that other providers may offer other options and that the Patient has the right to transport Embryos to other providers.

3. Transfer disclosure. Before each Transfer cycle, the provider must provide each Intended Parent with the following information in a Record, where applicable:
(a) Method used to achieve fertilization and the results of semen analysis, including, but not limited to, motility, count, and morphology;

(b) Number of eggs retrieved;

(c) For the Retrieval and Transfer of fresh Embryos:
   (i) Number formed;
   (ii) Number viable for Transfer;
   (iii) Number to be Transferred;
   (iv) Number preserved;
   (v) Quality of each Embryo Transferred; and
   (vi) Quality of each Embryo preserved;

(d) For the Transfer of preserved Embryos:
   (i) Number of Embryos thawed;
   (ii) Number of Embryos viable for Transfer after thawing; and
   (iii) Quality of Embryos Transferred;
   (iv) Remaining viability of thawed but unused Embryos, if any.

(e) A statement that failure to adhere to drug administration schedules may affect the outcome of the treatment.

4. Disclosure to Donors. If additional information is learned through medical or psychological evaluation prior to or upon Retrieval of Gametes that is relevant to the Donor’s health that information must be made available to the Donor if the Donor has made such a request. The Provider must disclose to a Donor that such information can be made available upon request.

5. Disclosure regarding health. Individuals from whom eggs are retrieved must be informed prior to the Retrieval of the health risks and adverse effects of ovarian stimulation and retrieval. Women undergoing Transfer must be informed of the health risks of that process. Health risk disclosures must include, where relevant, the following information regarding the fertility drugs to be used:

   (a) Known potential present and future side effects;
   (b) Alternative drug therapies and natural cycling;
(c) Process of drug administration; and

(d) Whether the drug is approved by the Food and Drug Administration (FDA).

6. Disclosure regarding multiple births/Retrievals. Where relevant, a Provider must disclose in a Record, to Participants other than Donors, prior to Retrieval, the known risks of multiple births to the Participant and to the fetuses, including the positive and negative factors involved in selective reduction; and the known potential birth defects related to IVF. A Provider must disclose prior to Retrieval to individuals undergoing egg retrieval the known potential present and future risks of multiple courses of ovarian stimulation drugs.

7. Disclosure regarding Embryo research. A Provider shall not accept from a Participant an Embryo designated for research under Section 502, and the Provider must disclose the existence of any financial or professional relationship with any entity accepting the Embryo for research.

SECTION 204. DONOR LIMITATIONS

In accordance with the requirements set forth elsewhere in this Act:

1. A Donor of Gametes or Embryos may condition donation on a reasonable assurance of anonymity so long as non-identifying health information is provided.

2. A Donor who has given permission for release of identifying health or other information may not revoke such permission after Transfer of the donated Gametes or of Embryos formed with the donated Gametes.

3. A Donor of Gametes or Embryos may condition donation on other reasonable use or disposition restrictions as set forth in a Record prior to donation.

SECTION 205. COLLECTION OF GAMETES FROM PRESERVED TISSUE OR GAMETES FROM DECEASED OR INCOMPETENT INDIVIDUALS

1. Gametes shall not be collected from deceased or incompetent individuals or from preserved tissues unless consent in a Record was executed prior to death or incompetency by the individual from whom the Gametes are to be collected, or the individual’s authorized fiduciary who has express authorization from the principal to so consent, does consent.

2. In the event of an emergency where the required consent is alleged but unavailable and where, in the opinion of the treating Physician, loss of viability would occur as a result of delay, and where there is a genuine question as to the existence of consent in a Record, an exception is permissible.

3. If Gametes are collected pursuant to paragraph 2 of this Section, Transfer of Gametes or of an Embryo formed from such a Gamete is expressly prohibited unless approved by a Court. Absence of a Record as described in Paragraph 1 shall constitute a presumption of non-consent.
LEGISLATIVE NOTE: States should customize this article to comport with the State’s criminal code.

4. Any individual or entity not acting in accordance with this Section may be subject to civil and/or criminal liability.

SECTION 206. LOSS OF EMBRYOS OR GAMETES DUE TO NATURAL DISASTER, ACT OF GOD, TERRORISM, OR WAR

An ART Storage Facility for Embryos or Gametes is not liable for destruction or loss of Embryos due to natural disaster, act of God, terrorism or war.

ARTICLE 3. MENTAL HEALTH CONSULTATION/ADDITIONAL COUNSELING

SECTION 301. CONSULTATION AS TO MENTAL HEALTH

1. All Participants known to the ART Provider must undergo a mental health Consultation with a Mental Health Professional in accordance with the most recently published Professional Guidelines of ASRM and SART prior to the ART procedure. The results of this Consultation shall only be used to determine suitability to participate in Collaborative Reproduction.

2. During the Mental Health Evaluation, the Provider must inform the Participant(s) of additional counseling options. The Participant’s acceptance of additional counseling is voluntary.

3. For purposes of this Article, Mental Health Professional is an individual who:

   (a) Holds a Masters or Doctoral degree in the field of Psychiatry, Psychology, Counseling, Social Work, Psychiatric Nursing, Marriage and Family Therapy, or State equivalent; and

   (b) Is licensed, certified, or registered to practice in the mental health field; and

   (c) Where reasonably possible, has received training in, or has knowledge of, reproductive physiology; the testing, diagnosis, and treatment of infertility; and/or the psychological issues in infertility and Collaborative Reproduction. If there are questions about inherited or genetic disorders, the Mental Health Professional must refer the Participant to a qualified professional for Consultation.

SECTION 302. ADDITIONAL COUNSELING REQUIREMENTS

1. An ART procedure using Collaborative Reproduction shall not be initiated or performed until:

   (a) All Participants made known to the ART Provider have been offered Mental Health Counseling following the initial Consultation as provided for in Section 301; and

   (b) The Mental Health Professional(s) have prepared and delivered to the medical Provider(s) a statement in a Record that he or she has met with the Participant(s) and that they have undergone the requisite Mental Health Evaluation;
2. Opportunity to receive counseling. It shall be conclusively presumed that a Participant has had the opportunity to receive additional counseling from a Mental Health Professional pursuant to Section 301 if that individual signs a statement containing the following language:

“I understand that counseling is recommended for all participants in collaborative reproduction and that counseling is a separate process from any consultation that [Provider] has required me to complete. [Provider] has given me the opportunity to meet with and receive counseling from a mental health professional with specialized knowledge of the social and psychological impact of assisted and collaborative reproduction on participants. I understand that I may choose any such mental health professional, and that I am not required to choose one recommended by this treatment facility.”

3. Assessment available to Intended Parents. Prior to any Transfer of Gametes or Embryos and prior to execution of any Collaborative Reproduction agreement, an Intended Parent shall be informed that, upon Intended Parent’s request, the Mental Health Professional’s recommendation regarding the assessment of a Participant for Collaborative Reproduction shall be provided by the ART Provider.

ARTICLE 4. PRIVACY AND CONFIDENTIALITY

SECTION 401. INDIVIDUALLY IDENTIFIABLE MEDICAL INFORMATION

All individually identifiable information obtained or created in the course of ART treatment is Medical Information and subject to medical record confidentiality requirements.

ARTICLE 5. EMBRYO TRANSFER AND DISPOSITION OF EMBRYOS NOT TRANSFERRED

SECTION 501. PARENTAL RIGHTS AND OBLIGATIONS

1. Intended Parents shall enter into a written agreement prior to Embryo formation detailing:

(a) Intended use of Embryos;

(b) Disposition of cryopreserved Embryos in the event of:

1. Dissolution of Intended Parents’ relationship (or divorce of Intended Parents, if married); and

2. Incapacity or death of one or both Intended Parents.

2. Such agreements may be amended in a Record, at any time prior to Transfer of an Embryo or the death of either Intended Parent.

3. All agreements shall include an address and permanent identifier of the Intended Parents.
4. All agreements must be delivered to the Providers and the ART Storage Facility, if any.

5. Any party to an Embryo storage or disposition agreement may withdraw his or her consent to the terms of the agreement in writing prior to a Transfer of the Embryo to a uterus of an Intended Parent, Gestational Surrogate, or Genetic Surrogate.

(a) Notice of said withdrawal of consent to the terms of the agreement must be given in a Record to the parties to the agreement and the Providers and ART Storage Facility, if any.

(b) After receipt of said notice in a Record by the other Intended Parent and/or by the clinic or storage facility of that individual’s intent to avoid Transfer, an Intended Parent may not Transfer the Embryos into the uterus of any person with the intent to create a Child. No prior agreement to the contrary will be enforceable.

(c) In the event that a Transfer occurs after receipt of notice in a Record of that individual’s intent to avoid Transfer as set forth in paragraph 5(b) of this Section that Intended Parent will not be the Parent of a resulting Child.

5. Following the death of an Intended Parent who has previously consented in a Record to posthumous use of cryopreserved Gametes and/or Embryos, the surviving Intended Parent or the person designated in the Record to receive control of use of the Embryos may use the Embryos in accordance with the decedent’s written consent in a Record. The Child born as a result of Embryo Transfer after the death of an Intended Parent or Gamete Provider is not the Child of that Gamete Provider or Intended Parent unless the deceased individual consented in a Record that if Assisted Reproduction were to occur after death, the deceased individual would be a Parent of the Child.

6. No Provider shall Transfer or create any Embryos following the death of an Intended Parent unless the necessary consent referred to in paragraph 5 of this Section is obtained and permanently recorded.

7. In the event that a written agreement pursuant to paragraph 1 is not executed prior to Embryo formation, the Intended Parent[s] may execute an agreement consistent with this Section that may be enforceable on a prospective basis.

SECTION 502. DONATION OF UNUSED EMBRYOS

Intended Parent(s) may choose to donate their unused Embryos for any of the following purposes subject only to any limitations set forth in a Record prior to donation as permitted and imposed pursuant to the provisions of Section 204 hereof, which choices shall be reflected in their agreement(s):

1. Donation to another Patient(s), either known or anonymous, for the purpose of the recipient attempting to create a Child and become that Child’s Parent.

2. Donation for approved research, the nature of which may be specifically set forth in the informed consent Record and which has received the approval of an institutional review board. No research
will be permitted that is not within the scope of the informed consent of the recorded agreement. This agreement may only be modified with the consent of the Intended Parent(s). After an Intended Parent has died, that individual’s consent endures and is irrevocable.

SECTION 503. SCREENING OF EMBRYO DONORS

Donors shall be screened prior to such donation in compliance with applicable state and federal law. Records of the donation shall be maintained in compliance with applicable state and federal law.

SECTION 504. ABANDONMENT OF EMBRYOS AND DISPOSITION OF ABANDONED EMBRYOS

1. An Embryo is deemed to be abandoned only if:

   (a) At least five years have elapsed since last communication from interested Participants to Provider and/or ART Storage Facility unless the Participants select another time by agreement as provided in a Record; and

   (b) A diligent attempt to notify the interested Participants, as well any Provider(s) who contracted for storage, that the Embryo is deemed to be abandoned (such attempt shall include, but not be limited to, notice by certified mail (or equivalent trackable medium) to each interested Participant’s permanent address or last known address, and shall require a period of not less than ninety days to elapse before any action is taken); and

   (c) The interested Participants have acknowledged that they have been informed of the provisions of (a) and (b) of this paragraph in an agreement in a Record executed prior to storage with the Provider and/or ART Storage Facility.

2. Disposition of an Embryo deemed to be abandoned under Paragraph 1 must be in accordance with the most recent recorded agreement between Participants and the ART Storage Facility. If there is no agreement in a Record, or if no agreement in a Record can be found after a diligent search, disposition must be as ordered by a Court.

3. Any Provider and/or ART Storage Facility that disposes of Embryos in compliance with this Section is immune from all civil and criminal liability that may arise as a result of the disposition of such Embryos, absent criminal intent, gross negligence, or intentional misconduct.

SECTION 505. TRANSPORTATION OF EMBRYOS

1. Transportation of Embryos is the responsibility of the individual or individuals requesting the transport.

2. Unless the ART Storage Facility has requested or required transport, it is immune from all civil and criminal liability incurred as a result of the transport, absent criminal intent, gross negligence, or intentional misconduct.
ARTICLE 6. CHILD OF ASSISTED REPRODUCTION

SECTION 601. SCOPE OF ARTICLE

This Article does not apply to the birth of a Child conceived by means of sexual intercourse, or as the result of a Surrogacy Agreement as provided in Article 7.

SECTION 602. PARENTAL STATUS OF DONOR

A. A Donor is not a Parent of a Child conceived by means of Assisted Reproduction.

B. Donor Agreements Authorized

1. A Gamete Donor and an Intended Parent(s) may enter into an agreement in a Record providing that:
   (a) The Donor agrees to donate Gametes in order for the Intended Parent(s) to conceive a Child through Assisted Reproduction.
   (b) The Donor, and spouse if married, relinquishes all property, parental, or other rights, responsibilities and claims with respect to any resulting Gametes, Embryos, and any Child born as a result of the Gamete donation;
   (c) Any donated Gametes, and any Embryos formed from the donated Gametes, shall be the sole property and responsibility of the Intended Parent(s), subject to the terms of the Donor agreement; and
   (d) The Intended Parent(s) shall be the Child's Parent(s), and shall have a Parent-Child Relationship from birth with all the rights and responsibilities resulting therefrom.

2. A Gamete Donor may be liable for Child support only if they fail to enter into a legal agreement in which the Donor relinquishes rights to any Gametes, resulting Embryos, or Child and the Intended Parent(s) fail to enter into an agreement in which the Intended Parent(s) agree to assume all rights and responsibilities for any resulting Child.

3. Any Donor Limitations as noted in Section 204 should be specified in the Donor agreement.

SECTION 603. PARENTAGE OF CHILD OF ASSISTED REPRODUCTION

An individual who provides Gametes for, or consents to, Assisted Reproduction by a person as provided in Section 604 with the intent to be a Parent of the Child is a Parent of the resulting Child.

SECTION 604. CONSENT TO ASSISTED REPRODUCTION

1. Consent by an individual who intends to be a Parent of a Child born by Assisted Reproduction must be in a signed Record in accordance with Article 2. This requirement does not apply to a Donor.
2. Failure of an Intended Parent to sign a consent required by paragraph 1, before or after birth of
the Child, does not preclude a finding of parentage if the person giving birth and the Intended
Parent resided together during the first two years of the Child’s life, and/or openly held out the
Child as their own.

SECTION 605. LIMITATION ON LEGAL SPOUSE’S DISPUTE OF PARENTAGE

1. The Legal Spouse of a person who gives birth to a Child by means of Assisted Reproduction
may not challenge the parentage of the Child unless:

(a) Within two years after learning of the birth of the Child a proceeding in the appropriate
Court is commenced to adjudicate parentage and the Court finds that the Legal Spouse did
not provide the Gametes for the Child and did not consent to Assisted Reproduction, before
or after birth of the Child.

(b) The Legal Spouse never openly held out the Child as his or her own.

2. This Section applies to a marriage declared invalid after Assisted Reproduction.

SECTION 606. EFFECT OF DISSOLUTION OF MARRIAGE OR WITHDRAWAL
OF CONSENT

1. If a marriage is dissolved before an insemination or Embryo Transfer the former spouse is not
a Parent of the resulting Child unless the former spouse consented in a Record that if Assisted
Reproduction were to occur after a divorce, the former spouse would be a Parent of the Child.

2. The consent of an individual to Assisted Reproduction may be withdrawn by that individual in
a Record at any time before an insemination or Embryo Transfer. An individual who withdraws
consent under this Section is not a Parent of the resulting Child.

SECTION 607. PARENTAL STATUS OF DECEASED INDIVIDUAL

Except as otherwise provided in the enacting jurisdiction's probate code, if an individual who
consented in a Record to be a Parent by Assisted Reproduction dies before an insemination or
Embryo Transfer, the deceased individual is not a Parent of the resulting Child unless the deceased
spouse consented in a Record that if Assisted Reproduction were to occur after death, the deceased
individual would be a Parent of the Child.

ARTICLE 7. SURROGACY

SECTION 701. SURROGACY AGREEMENTS AUTHORIZED

A. A Gestational or Genetic Surrogate and, if married, the Gestational or Genetic Surrogate’s
Legal Spouse and the Intended Parent(s) may enter into an agreement in a Record providing
that:
1. The Gestational or Genetic Surrogate agrees to attempt pregnancy by means of Assisted Reproduction;

2. The Gestational or Genetic Surrogate and, if married, the Gestational or Genetic Surrogate’s Legal Spouse relinquish all parental rights and duties with respect to any Child resulting from the Assisted Reproduction procedure(s); and

3. The Intended Parent(s) shall be recognized as the sole Parent(s) of the Child.

B. A Surrogacy Agreement may provide for payment of consideration under Article 8 of this Act.

C. A Surrogacy Agreement may not limit the right of the Gestational or Genetic Surrogate to make decisions to safeguard the Gestational or Genetic Surrogate’s health or that of the Embryo(s) or fetus.

D. A Genetic Surrogacy Agreement shall be subject to the following additional requirements and is enforceable only if:

1. Judicially validated as provided in Section 706; and

2. The Assisted Reproduction procedure(s) utilized to attempt a pregnancy are performed under the supervision of a licensed Physician.

SECTION 702. ELIGIBILITY

A. A Gestational or Genetic Surrogate shall be deemed to have satisfied the requirements of this Act if the Gestational or Genetic Surrogate has met the following requirements at the time the Surrogacy Agreement is executed and prior to the anticipated pregnancy. The Gestational or Genetic Surrogate:

1. Is at least twenty-one (21) years of age;

2. Has given birth to at least one (1) Child;

3. Has completed a Medical Evaluation relating to the anticipated pregnancy;

4. Has completed a Mental Health Evaluation relating to the anticipated Surrogacy Arrangement;

5. Has undergone legal Consultation with independent legal counsel regarding the terms of the Surrogacy Agreement and the potential legal consequences of the Surrogacy Arrangement;

6. Has, or obtains prior to undergoing Assisted Reproduction procedure(s) to achieve pregnancy, a health insurance policy that covers major medical treatments and
hospitalization and the health insurance policy has a term that extends throughout the
duration of the expected pregnancy and for eight (8) weeks after the birth of the Child;
however, the policy may be procured by the Intended Parents on behalf of the
Gestational or Genetic Surrogate pursuant to the Surrogacy Agreement.

B. The Intended Parent(s) shall be deemed to have satisfied the requirements of this Act if the
Intended Parent(s) have met the following requirements at the time the Surrogacy
Agreement is executed and prior to the anticipated pregnancy. Intended Parent(s):

1. Have a medical need for the Surrogacy Arrangement as evidenced by a qualified
Physician’s affidavit attached to the Surrogacy Agreement;

2. Have completed a Mental Health Evaluation relating to the anticipated Surrogacy
Arrangement; and

3. Have undergone legal Consultation with independent legal counsel regarding the terms
of the Surrogacy Agreement and the potential legal consequences of the Surrogacy
Arrangement.

C. The relevant State regulatory agency may adopt rules pertaining to the required Medical
Evaluations and Mental Health Evaluations for a Surrogacy Agreement. Until the relevant
State regulatory agency adopts such rules, Medical Evaluations and Mental Health
Evaluations and procedures shall be conducted in accordance with the recommended
guidelines published by the ASRM, SART, and the American College of Obstetricians and
Gynecologists (ACOG). The rules may adopt these guidelines or others by reference.

SECTION 703. REQUIREMENTS FOR A SURROGACY AGREEMENT

A. A Surrogacy Agreement is enforceable only if:

1. It meets the contractual requirements set forth in Section 703(B); and

2. It contains at a minimum each of the terms set forth in Section 703(C); and

3. If the Surrogacy Agreement is a Genetic Surrogacy Agreement, it must be judicially
validated, as required by Section 706, prior to attempting pregnancy by means of
Assisted Reproduction.

B. A Surrogacy Agreement shall meet the following requirements:

1. It shall be in writing;

2. It shall be executed prior to the commencement of any medical procedures in
furtherance of the Surrogacy Arrangement (other than Medical Evaluations or Mental
Health Evaluations necessary to determine eligibility of the parties pursuant to Section
702 of this Act), by:
(a) A Gestational or Genetic Surrogate meeting the eligibility requirements of Section 702(A) of this Act and, if married, the Gestational or Genetic Surrogate’s Legal Spouse; and

(b) The Intended Parent(s) meeting the eligibility requirements of Section 702(B) of this Act.

3. The Gestational or Genetic Surrogate, and, if married, the Gestational or Genetic Surrogate’s Legal Spouse, and the Intended Parent(s) shall be represented by separate, independent counsel in all matters concerning the Surrogacy Arrangement and the Surrogacy Agreement;

4. Each of the parties acknowledge in writing that they received information about the legal, financial, and contractual rights, expectations, penalties, and obligations of the Surrogacy Agreement;

5. If the Surrogacy Agreement provides for the payment of Compensation to the Gestational or Genetic Surrogate, the Compensation shall be placed in escrow with an independent Escrow Agent prior to the Gestational or Genetic Surrogate’s commencement of any medical procedure (other than Medical or Mental Health Evaluations necessary to determine the Gestational or Genetic Surrogate’s eligibility pursuant to Section 702(A) of this Act); and

6. Each party’s signature shall be notarized or witnessed by two (2) competent adults who are not parties to the Surrogacy Agreement.

C. A Surrogacy Agreement shall provide for:

1. The express written agreement of the Gestational or Genetic Surrogate to:

   (a) Undergo Assisted Reproduction procedure(s) to achieve a pregnancy and attempt to carry and give birth to a Child; and

   (b) Surrender custody of any Child resulting from such Assisted Reproduction procedure(s) to the Intended Parent(s) immediately upon birth;

2. If the Gestational or Genetic Surrogate is married, the express agreement of the Gestational or Genetic Surrogate’s Legal Spouse to:

   (a) Undertake the obligations imposed on the Gestational or Genetic Surrogate pursuant to the terms of the Surrogacy Agreement; and

   (b) Surrender custody of any Child resulting from such Assisted Reproduction procedure(s) to the Intended Parent(s) immediately upon birth;
3. The right of the Gestational or Genetic Surrogate to utilize the services of a Physician chosen by the Gestational or Genetic Surrogate, after consultation with the Intended Parents, to provide care to the Gestational or Genetic Surrogate during the pregnancy; and

4. The right of the Gestational or Genetic Surrogate to make decisions to safeguard their own health or that of the Embryo(s) or fetus(es).

5. The express written agreement of the Intended Parent(s) to:
   (a) Accept custody of any Child resulting from such Assisted Reproduction procedure(s) immediately upon birth regardless of number, gender, or mental or physical condition; and
   (b) Assume sole responsibility for the support of the Child immediately upon birth.

6. Intended Parent(s) payment of reasonable medical and/or ancillary expenses including:
   (a) The premiums for a health insurance policy that covers medical treatment and hospitalization for the Gestational or Genetic Surrogate unless otherwise mutually agreed upon by the parties, pursuant to the terms of the Surrogacy Agreement; and
   (b) The payment of all uncovered medical expenses; and
   (c) Other reasonable financial arrangements mutually agreed upon by the parties, pursuant to the terms of the Surrogacy Agreement.

D. The appropriate State law for determining the Parent-Child Relationship pursuant to a Surrogacy Agreement is where:

1. At least one of the parties to the Surrogacy Agreement is a resident; or

2. At least one of the medical procedures pursuant to the Surrogacy Agreement occurs; or

3. The birth occurs or is anticipated to occur.

4. If none of the above applies, the appropriate State law for determining the Parent-Child Relationship shall be determined under the Uniform Child Custody Jurisdiction and Enforcement Act.

E. A Surrogacy Agreement is enforceable even though it contains one or more of the following provisions:
1. The Gestational or Genetic Surrogate’s agreement to undergo all medical exams, treatments, and fetal monitoring procedures that the Physician recommends for the success of the pregnancy;

2. The Gestational or Genetic Surrogate’s agreement to abstain from any activities that the Intended Parent(s) or the Physician reasonably believe to be harmful to the pregnancy and future health of the Child, including, without limitation, smoking, drinking alcohol, using non-prescribed drugs, using prescription drugs not authorized by a Physician aware of the Gestational or Genetic Surrogate’s pregnancy, exposure to radiation, or any other activities proscribed by a health care Provider;

3. The agreement of the Intended Parent(s) to pay the Gestational or Genetic Surrogate reasonable Compensation; and

4. The agreement of the Intended Parent(s) to pay for or reimburse the Gestational or Genetic Surrogate for reasonable expenses (including, without limitation, medical, legal, or other professional or necessary expenses) related to the Surrogacy Arrangement and to the Surrogacy Agreement.

SECTION 704. TERMINATION OF SURROGACY AGREEMENT

A. Prior to Pregnancy

1. Before a Gestational or Genetic Surrogate undergoes the Assisted Reproduction procedure(s) to attempt pregnancy, and subject to the terms of the Surrogacy Agreement, any party may terminate the Surrogacy Agreement by giving written notice of termination to all other parties.

2. No party may terminate the Surrogacy Agreement after an Embryo Transfer procedure and prior to a pregnancy test at a time to be determined by a qualified Physician.

3. Any party who terminates a Genetic Surrogacy Agreement after the appropriate Court issues an order validating a Genetic Surrogacy Agreement under Section 706 but before the Genetic Surrogate becomes pregnant by means of Assisted Reproduction shall also file notice of the termination with the appropriate Court. On receipt of the notice, the appropriate Court shall order a stay on all medical procedures contemplated under the terms of the Genetic Surrogacy Agreement.

4. Except as otherwise agreed to among the parties in the Surrogacy Agreement, no party shall be liable to any other party for terminating the Surrogacy Agreement before the Gestational or Genetic Surrogate becomes pregnant by means of Assisted Reproduction.

B. After Pregnancy is confirmed.
1. No party may terminate a Surrogacy Agreement once a successful pregnancy is confirmed.

SECTION 705. ESTABLISHMENT OF PARENT CHILD RELATIONSHIP IN GESTATIONAL SURROGACY

A. RIGHTS OF PARENTAGE

1. Except as provided in this Act, a woman who gives birth to a Child is presumed to be the mother of that Child for purposes of State law.

2. The parties to a Gestational Surrogacy Agreement shall assume the rights and obligations of paragraphs 2 and 3 of this Section 705(A) if:

   (a) The Gestational Surrogate satisfies the eligibility requirements set forth in Section 702(A);

   (b) The Intended Parent(s) satisfy the eligibility requirements set forth in Section 702(B); and

   (c) The Gestational Surrogacy Agreement complies with the requirements of Section 703.

3. In the case of a Gestational Surrogacy Agreement satisfying the requirements set forth in paragraph 1 of this Section 705(A):

   (a) The Intended Parent(s) shall be the Parents of the Child for purposes of State law immediately upon the birth of the Child;

   (b) The Child shall be considered the Child of the Intended Parent(s) for purposes of State law immediately upon the birth of the Child;

   (c) Parental rights shall vest in the Intended Parent(s) immediately upon the birth of the Child;

   (d) Sole custody of the Child shall rest with the Intended Parent(s) immediately upon the birth of the Child; and

   (e) Neither the Gestational Surrogate nor the Gestational Surrogate’s Legal Spouse, if any, shall be the Parent of the Child for purposes of State law immediately upon the birth of the Child.

4. In the case of a Gestational Surrogacy Arrangement meeting the requirements set forth in this Section 705, in the event of a laboratory error in which the laboratory transfers embryo(s) not legally belonging to the Intended Parent(s), the Intended Parents will be the Parents of the Child for purposes of State law unless otherwise determined by a
Court in an action which can only be brought by one or more of the parties to the Surrogacy Agreement or the genetic contributors within two (2) years of the date of the Child’s birth.

B. ADMINISTRATIVE ESTABLISHMENT OF THE PARENT-CHILD RELATIONSHIP

1. For purposes of the State’s relevant parentage act, the Parent-Child Relationship that arises immediately upon the birth of the Child pursuant to Section 705(A) is established, if, prior to or within three (3) business days following the birth of a Child born through a Gestational Surrogacy Agreement, the attorneys representing both the Gestational Surrogate and the Intended Parent(s) certify in a Record to the birth hospital and the State office responsible for issuing birth records that the parties entered into a Surrogacy Agreement and satisfied the requirements of Section 704 of this Act with respect to the Child.

2. The attorneys’ certifications required by paragraph 1 of this Section 705(B) shall be filed on forms prescribed by the relevant State regulatory agency and in a manner consistent with the requirements of the State’s relevant parentage act, if any.

3. The attorney certifications required by paragraph 1 of this Section 705(B) shall be effective for all purposes hereunder if completed prior to or within three (3) business days following the Child’s birth.

4. In lieu of the attorney certifications required by paragraph 1 of this Section 705(B), a party to a Surrogacy Agreement that has satisfied the requirements of Section 704 of this Act may petition the appropriate Court for a pre-birth or post-birth judgment establishing the parent-child relationship with respect to the Child.

5. Upon compliance with the certification provision of this Section, or upon presentation of a Court-ordered judgment establishing the parent-child relationship, all hospital representatives and/or employees and the State’s relevant regulatory agency shall, on an expedited basis, complete all birth records and the original birth certificate of the Child to reflect the Intended Parent(s) as the Child’s Parent(s) thereon.

6. If a birth results under a Gestational Surrogacy Agreement that does not comply with all the requirements and procedures set forth in this Section 705, the Parent-Child Relationship shall be determined as provided under other applicable State law specifically taking into consideration the intent of the parties at the time of the execution of the Gestational Surrogacy Agreement and the best interests of the Child. An Intended Parent is a presumed parent who has standing to request and be awarded legal parentage of the Child for the purposes of this provisions and any parentage proceeding hereunder.

SECTION 706. ESTABLISHMENT OF PARENT CHILD RELATIONSHIP IN GENETIC SURROGACY
A. RIGHTS OF PARENTAGE

1. The parties to a Genetic Surrogacy Agreement shall assume the rights and obligations of paragraphs 2 and 3 of this Section 706(A) if:

(a) The Genetic Surrogate satisfies the eligibility requirements set forth in Section 702(A);

(b) The Intended Parent(s) satisfy the eligibility requirements set forth in Section 702(B); and

(c) The Genetic Surrogacy Agreement complies with the requirements of Section 703 and has been judicially pre-approved prior to the commencement of any medical procedures in furtherance of the Surrogacy Arrangement (other than Medical Evaluations or Mental Health Evaluations necessary to determine eligibility of the parties pursuant to Section 702 of this Act) as set forth in this Section 706.

2. In the case of a Genetic Surrogacy Agreement satisfying the requirements set forth in paragraph 1 of this Section 706(A):

(a) The Intended Parent(s) shall be the Parents of the Child for purposes of State law immediately upon the birth of the Child;

(b) The Child shall be considered the Child of the Intended Parent(s) for purposes of State law immediately upon the birth of the Child;

(c) Parental rights shall vest in the Intended Parent(s) immediately upon the birth of the Child;

(d) Sole custody of the Child shall rest with the Intended Parent(s) immediately upon the birth of the Child; and

(e) Neither the Genetic Surrogate nor the Genetic Surrogate’s Legal Spouse, if any, shall be the Parent of the Child for purposes of State law immediately upon the birth of the Child.

3. In the case of a Genetic Surrogacy Arrangement meeting the requirements set forth in this Section 706, in the event of a laboratory error in which the laboratory transfers embryo(s) not legally belonging to the Intended Parent(s), the Intended Parents will be the Parents of the Child for purposes of State law unless otherwise determined by a Court in an action which can only be brought by one or more of the parties to the Surrogacy Agreement or the genetic contributors within two (2) years of the date of the Child’s birth.

B. JUDICIAL PRE-APPROVAL OF GENETIC SURROGACY AGREEMENT
1. Prior to the commencement of any medical procedures in furtherance of the Genetic Surrogacy Arrangement (other than Medical Evaluations or Mental Health Evaluations necessary to determine eligibility of the parties pursuant to Section 702 of this Act), the Intended Parent(s), the Genetic Surrogate, and Genetic Surrogate’s Legal Spouse, if any, shall commence a proceeding to obtain judicial pre-approval of a Genetic Surrogacy Agreement by filing a petition in the appropriate Court. A proceeding to obtain judicial pre-approval of a Genetic Surrogacy Agreement may not be maintained unless all parties to the Genetic Surrogacy Agreement join in the petition. A copy of the fully-executed Genetic Surrogacy Agreement must be filed with the petition.

2. If the requirements of paragraph 1 of this Section 706(B) are satisfied, the appropriate Court shall issue an order validating the Genetic Surrogacy Agreement and declaring that the Intended Parent(s) will, subject to the issuance of a final post birth order, be the sole Parent(s) of a Child born during the term of the Genetic Surrogacy Agreement.

3. The Court shall issue an order under this Section 706(B) only on finding that:
   
   (a) The requirements of Section 702 have been satisfied;
   (b) The requirements of Section 706(B) have been satisfied;
   (c) All parties have voluntarily entered into the Genetic Surrogacy Agreement meeting the requirements of Section 703 and understand its terms;
   (d) Adequate provision has been made for all reasonable health-care expenses associated with the Genetic Surrogacy Agreement, including responsibility for those expenses if the Genetic Surrogacy Agreement is terminated, as set forth in Section 703(C)(6); and
   (e) The consideration, if any, to be paid to the Genetic Surrogate is reasonable.

C. PARENTAGE UNDER A JUDICIALLY PRE-APPROVED GENETIC SURROGACY AGREEMENT

1. Upon birth of a Child pursuant to a judicially pre-approved Genetic Surrogacy Agreement, all parties shall jointly file a notice with the appropriate Court that a Child has been born as a result of the Assisted Reproduction procedure(s). Thereupon, the appropriate Court shall issue an order:
   
   (a) Confirming that the Intended Parent(s) are the Parent(s) of the Child;
   (b) If necessary, ordering that the Child be surrendered to the Intended Parent(s); and
2. If the parentage of a Child born to a Genetic Surrogate is alleged not to be the result of the Assisted Reproduction procedure(s), the appropriate Court shall order genetic testing to determine the parentage of the Child.

3. If the parties fail to comply with paragraph 1 of this Section 706(C), the appropriate State agency may, upon request of any party, file notice with the appropriate Court that a Child has been born to the Genetic Surrogate as a result of Assisted Reproduction. Upon proof of a Court order issued pursuant to Section 706(B) validating the Genetic Surrogacy Agreement, the appropriate Court shall order that the Intended Parent(s) are the sole legal Parent(s) of the Child and are financially responsible for the Child.

4. If a birth results under a Genetic Surrogacy Agreement that is not judicially pre-approved as provided in this Section 706, the Parent-Child Relationship shall be determined as provided under other applicable State law specifically taking into consideration the intent of the parties at the time of the execution of the Gestational Surrogacy Agreement and the best interests of the Child. An Intended Parent is a presumed parent who has standing to request and be awarded legal parentage of the Child for the purposes of this provisions and any parentage proceeding hereunder.

SECTION 707. FULL FAITH AND CREDIT

An establishment of parentage pursuant to Section 705 or 706 of this Act shall be given full faith and credit in another State if the establishment was in a signed Record and otherwise complies with the law of the other State.

SECTION 708. DUTY TO SUPPORT

A. Any individual who is considered to be the Parent of the Child pursuant to Section 705 or Section 706 of this Act shall be obligated to support the Child.

B. Intended Parents who are parties to a non-compliant Gestational Surrogacy Arrangement or an unapproved Genetic Surrogacy Agreement may be held liable for support of the resulting Child under other law.

C. Breach of the Surrogacy Agreement by the Intended Parent(s) shall not relieve such Intended Parent(s) of the support obligations imposed by this Act.

SECTION 709. EFFECT OF SURROGATE’S SUBSEQUENT MARRIAGE

A. Gestational Surrogacy
Subsequent marriage of the Gestational Surrogate after execution of a Surrogacy Agreement under this article does not affect the validity of the Surrogacy Agreement, consent to the Surrogacy Agreement from the Gestational Surrogate’s Legal Spouse is not required, and the Gestational Surrogate’s Legal Spouse is not a presumed Parent of the resulting Child.

B. Genetic Surrogacy

After the issuance of an order validating a Surrogacy Agreement between Intended Parents and a Genetic Surrogate under this article, subsequent marriage of the Genetic Surrogate does not affect the validity of a Surrogacy Agreement, consent to the Surrogacy Agreement from the Genetic Surrogate’s Legal Spouse is not required, and the Genetic Surrogate’s Legal Spouse is not a presumed Parent of the resulting Child.

SECTION 710. IRREVOCABILITY

No action to challenge the rights of parentage established pursuant to Section 705 or Section 706 of this Act or the relevant State parentage act provisions shall be commenced after twelve (12) months from the date of birth of the Child.

SECTION 711. NONCOMPLIANCE

Noncompliance occurs when a Gestational or Genetic Surrogate, and, if married, the Gestational or Genetic Surrogate’s Legal Spouse, or the Intended Parent(s) breach a provision of the Surrogacy Agreement or any party to or agreement for a Surrogacy Arrangement fails to meet any of the requirements of this Act.

SECTION 712. EFFECT OF NONCOMPLIANCE

In the event of noncompliance with this Article, the appropriate Court of competent jurisdiction shall determine the respective rights and obligations of the parties to any Surrogacy Arrangement based solely on evidence of the parties’ original intent.

SECTION 713. IMMUNITIES

Except as provided in this Act, no person shall be civilly or criminally liable for non-negligent actions taken pursuant to the requirements of this Act. This provision shall not prevent liability or actions between or among the parties, including actions brought by or on behalf of the Child, based on negligent, reckless, willful, or intentional acts that result in damages to any party.

SECTION 714. DAMAGES

A. Except as expressly provided in the Surrogacy Agreement, the Intended Parent(s) shall be entitled to all remedies available at law or equity in the event of a breach of the Surrogacy Agreement.
B. Except as expressly provided in the Surrogacy Agreement, a Gestational or Genetic Surrogate shall be entitled to all remedies available at law or equity in the event of a breach of the Surrogacy Agreement.

C. There shall be no specific performance remedy available for a breach by a Gestational or Genetic Surrogate of a Surrogacy Agreement that limits the right of the Gestational or Genetic Surrogate to make decisions regarding their body or forces the Gestational or Genetic Surrogate to undergo Assisted Reproduction for the purposes of becoming pregnant.

SECTION 715. INSPECTION OF RECORDS

The proceedings, records, and identities of the individual parties to a Surrogacy Agreement under this Article are subject to inspection by the parties and their attorneys of record under the standards of confidentiality applicable to adoptions as provided under other law of this State.

SECTION 716. EXCLUSIVE, CONTINUING JURISDICTION

During the period governed by the Surrogacy Agreement, the Court conducting a proceeding under this Act has exclusive, continuing jurisdiction of all matters arising out of the Surrogacy Agreement until the Child, delivered by the Gestational or Genetic Surrogate during the term of the Surrogacy Agreement, attains the age of ninety (90) days; however, nothing in this provision gives the Court jurisdiction over a child custody or a child support action where such jurisdiction is not otherwise authorized.

ARTICLE 8. PAYMENT TO DONORS AND GESTATIONAL CARRIERS

SECTION 801. REIMBURSEMENT

1. A Donor may receive reimbursement for economic losses resulting from the Retrieval or storage of Gametes or Embryos and incurred after the Donor has entered into a valid agreement in a Record to be a Donor.

2. Economic losses occurring before a Donor, Gestational Surrogate or Genetic Surrogate has entered into valid agreement in a Record may not be reimbursed unless subsequently agreed upon in the agreement, except as provided for in paragraph 3 hereof.

3. Premiums paid for insurance against economic losses directly resulting from the Retrieval or storage of Gametes or Embryos for donation may be reimbursed, even if such premiums have been paid before the Donor has entered into a valid agreement in a Record, so long as such agreement becomes valid and effective before the Gametes or Embryos are used in Assisted Reproduction in accordance with the agreement.

SECTION 802. COMPENSATION
1. The consideration, if any, paid to a Donor, Gestational Surrogate, or Genetic Surrogate must be reasonable and negotiated in good faith between the parties.

2. Compensation may not be conditioned upon the quantity, purported quality or genome-related traits of the Gametes or Embryos.

3. Compensation may not be conditioned on actual genotypic or phenotypic characteristics of the Donor or of the Child.

ARTICLE 9. HEALTH INSURANCE

SECTION 901. INFERTILITY AND EXPERIMENTATIONAL PROCEDURES

1. For the purposes of health insurance coverage, infertility means:

   (a) Resulting from a disease or condition that causes abnormal function of the reproductive system, the inability to:

   (i) Conceive after attempts at conception by unprotected sexual intercourse have been made for at least one year; or

   (ii) Sustain a pregnancy to live birth; or

   (b) The presence of another condition recognized by accepted medical standards as a cause of the inability to achieve or sustain a pregnancy to live birth; or

   (c) The necessity to achieve pregnancy by means other than sexual intercourse. Insurance coverage provided for (a) and (b) above may not be denied on the basis of this subparagraph.

2. The ASRM or other appropriate governmental regulatory authority may designate, from time to time, a list of ART procedures and treatments considered to be experimental.

SECTION 902. REQUIRED NOTICE

1. Each group health benefit plan that offers assisted reproductive health services shall provide notice in a Record to each enrollee in the plan of the specific coverage provided for those services.

2. The notice required under this Section must be prominently positioned in any literature, insurance application, or insurance policy plan description made available or distributed by the group health benefits plan to enrollees.

SECTION 903. QUALIFICATION OF PROVIDERS

A health insurer may require that any licensed Physician participating in the treatment of infertility must be:
(a) Board certified in Obstetrics and Gynecology by the American Board of Obstetrics and Gynecology and have a practice comprised substantially of infertility cases; or

(b) Board certified in both Obstetrics and Gynecology and in Reproductive Endocrinology by the American Board of Obstetrics and Gynecology, with a practice comprised substantially of infertility cases; or

(c) Board certified in both Andrology and Urology by the American Board of Urology.

ARTICLE 10. QUALITY ASSURANCE

SECTION 1001. QUALIFICATIONS OF PROVIDERS

ART Providers, ART clinics, and ART storage facilities (hereafter “Program”) shall assure the quality of their services by developing and complying with at least the following quality assurance measures:

(a) Personnel. The Program shall document that senior and supervisory staff are adequately trained, including formal training in genetics. Documentation shall also include staff participation in laboratory training programs and regular updating of staff skills and knowledge.

(b) Equipment. The Program shall develop, implement, and test regularly backup and contingency plans for cryopreservation systems, computer systems, and records.

(c) Testing. The Program shall participate in proficiency testing and on-site inspection, in compliance with the requirements for certification promulgated by the State Department of Health, if any. If genetic diagnostic services are provided, the Program shall participate in the College of American Pathologists and the American College of Medical Genetics genetic proficiency testing programs.

SECTION 1002. DONOR AND COLLABORATIVE REPRODUCTION REGISTRIES

1. Donor and Collaborative Reproduction registries (or equivalent) created for the purpose of maintaining contact, medical, and psychosocial information about Donors, gestational carriers, and Children born as a result of ART, or to benefit the public health, operating within this jurisdiction shall incorporate, at a minimum, the following elements:

(a) Establish procedures to allow the disclosure of non-identifying information, while protecting the anonymity of Donors;

(b) Establish procedures to allow the disclosure of identifying information about Participants only if mutual consent of all parties affected is obtained prior to the release of such information;
(c) Maintain medical and genetic information and updated current health information, including change in health status, about the Donor; Donors or Providers are not required to update such information unless required by written agreement;

(d) Establish procedures to allow disclosure of non-identifying medical and psychosocial information to the resulting Child;

(e) Establish whether a resulting Child is authorized to contact a program; and

(f) Retain all records involving third party reproduction until the resulting Child has reached the age of 40.

2. Health care Providers in this jurisdiction shall not utilize registries that fail to comply with the requirements of paragraph 1, except as may be otherwise required or permitted by federal or State law.

SECTION 1003. HEALTH INFORMATION MANAGEMENT

1. The Provider:

(a) Shall attempt to maintain an address for contact by Patients, resulting Children, and Participants;

(b) Shall participate in a national Donor and Collaborative Reproduction registry, if established as described in Section 1002 of this Act, so that Intended Parents and Donors can provide the program with address information;

(c) Shall participate in a national Donor and Collaborative Reproduction registry, if established as described in Section 1002 of this Act, by collecting medical and genetic information and updated current health information, including change in health status of the Donor; and

(d) Shall maintain an accurate record of the disposition of all Gametes and Embryos.

2. The Program shall maintain all records in compliance with State and Federal law.

3. The Program shall transfer all records involving Collaborative Reproduction to a national Donor and Collaborative Reproduction registry in compliance with its requirements, if established as described in Section 1002 of this Act.

4. Disclosure of Medical Information.

(a) Medical Information may be disclosed to an interested party or resulting Child only if an authorization is signed pursuant to Articles 2 and 4 of this Act;
(b) The Program may disclose aggregate, non-identifiable data for quality assurance and reporting requirements, for the limited purpose of:

(i) Ensuring a standard for the maintenance of records on laboratory tests and procedures performed, including safe sample disposal;

(ii) Maintaining records on personnel and facilities, schedules of preventive maintenance; and

(iii) Ensuring minimum qualification standards for personnel.

SECTION 1004. PATIENT SAFETY

The program shall:

1. Conduct medical testing for sexually transmitted diseases in Gamete Providers, whether Donors or Intended Parents, and gestational carriers in compliance with the laws and regulations of or applying to appropriate governmental regulatory authorities; and

2. Conduct medical screening of Gamete and Embryo Donors for genetic disorders. The extent of such screening shall be in conformity with guidelines established by the ASRM and SART. In the event that no such guidelines have been developed, the screening shall be in accordance with accepted standards of medical practice for ART Providers.

3. Establish procedures for the proper labeling of Embryos and Gametes in compliance with the laws and regulations of or applying to appropriate governmental regulatory authorities.

ARTICLE 11. ENFORCEMENT

SECTION 1101. DAMAGES

1. The failure of a Provider to comply with this Act shall constitute unprofessional conduct and may be reported to any controlling licensing authority.

2. In addition to other remedies available at law, including but not limited to causes of action under HIPAA, a Participant whose ART information has been used or disclosed in violation of this Act and who has sustained economic loss or personal or emotional injury therefrom may recover compensatory damages, reasonable attorney’s fees, and the costs of litigation.

3. Failure to account for all Embryos, misuse of Embryos, theft of Embryos, or unauthorized disposition of Embryos may subject a Provider or ART Storage Facility to criminal and civil penalties, including punitive damages, and reasonable legal fees to the prevailing party.

ARTICLE 12. MISCELLANEOUS PROVISIONS

SECTION 1201. LIMITATION OF MEDICAL PROFESSIONAL LIABILITY
1. Licensed Providers rendering services in compliance with practice and ethical guidelines (contemporaneous to the time of alleged breach of the standard of care) or applicable State or federal regulations or statutes are presumed to have rendered care within accepted standards of care.

2. The presumption in paragraph 1 is rebuttable only upon a showing that an issue relating to a standard of care not covered in the practice and ethical guidelines or regulatory or statutory standards, as described in paragraph 1, exists, and upon a finding that there has been a breach of the standard of care on that issue.

3. No cause of action initiated more than six years after the birth of a Child from ART, or more than two years after injury resulting from ART could reasonably have been detected, whichever is greater, shall be valid.

SECTION 1202. SEVERABILITY

The invalidation of any part of this legislation by a court of competent jurisdiction shall not result in the invalidation of any other part.
EXECUTIVE SUMMARY

1. Summary of the Resolution
The Resolution recommends consideration of and adoption by appropriate governmental agencies and legislatures of the Model Act Governing Assisted Reproductive Technology.

2. Summary of the Issue that the Resolution Addresses
The Section of Family proposes the Model Act Governing Assisted Reproductive Technology [2018] to replace the Model Act Governing Assisted Reproductive Technology [2008] previously approved by the House of Delegates. Social, legal, and medical advancements in the area of assisted reproductive technologies (“ART”) require modernization of the 2008 Model Act. These include making the language neutral as to gender- and sexual-orientation to insure equal treatment of those children born through assisted reproduction to same-sex couples. Second, the 2008 Model Act aimed to be consistent with and to track the corresponding provisions of the Uniform Parentage Act (“UPA”) (2000), as amended in 2002, and the 2002 UPA provisions regulating surrogacy arrangements and ART-parentage have recently been updated for consistency with current practice. Finally, the proposed revisions address the issue of the resulting children’s right to access information about their gamete (sperm or egg) donor.

3. Please Explain How the Proposed Policy Position will address the issue
The Model Act Governing Assisted Reproductive Technology [2018] includes new defined terms and updated definitions throughout to allow for gender-neutral terminology, updates provisions regulating surrogacy arrangements and ART-parentage for consistency with current practice and addresses children’s right to access information about their gamete (sperm or egg) donor. The Model Act [2018] brings current parentage law up to speed with social, legal, and medical advancements and is a necessary step in the right direction in preparing for the future of parentage law.

4. Summary of Minority Views
None.
RESOLUTION

RESOLVED, That the American Bar Association urges Congress to repeal Section 641 of the National Defense Authorization Act for Fiscal Year 2017, as codified at 10 U.S.C. § 1408 (a)(4); and

FURTHER RESOLVED, That the American Bar Association opposes federal legislation that:

(a) creates a single federal rule for division of military retired pay as a fixed benefit on the date of divorce; and

(b) overrides the discretion and authority of state legislatures and courts to determine the fair, just and equitable division of military pensions.
EXECUTIVE SUMMARY

1. Summary of the Resolution

The Resolution calls for the American Bar Association to oppose the 2016 amendment to the Uniformed Services Former Spouses’ Protection Act (USFSPA), 10 U.S.C. § 1408, specifically Section 641 of the National Defense Authorization Act for Fiscal Year 2017, as codified in 10 U.S.C. § 1408 (a)(4), and to urge Congress to repeal the amendment. The amendment requires that, in divorce cases involving members of the uniformed services, the court may only divide a hypothetical amount of retired pay, as if the servicemember had retired at the date of divorce. This is contrary to the rules for division of all pensions in a large majority of the states. It would create a federal law of military pension division, tying the hands of judges in these cases and creating a special class of pensions to be divided in divorce. Long the province of state courts, the rules for divorce and property division need to remain in the hands of state and local judges. They need not be imposed in a rule which creates a fictional freeze of the pension at the date of divorce. The new statute will cause substantial disruption to state pension-division schemes and overturn a substantial body of state laws which comprehensively and appropriately address the division of military pensions.

2. Summary of the Issue that the Resolution Addresses

The issue which the Resolution addresses is the imposition of a nationwide method of dividing uniformed services retired pay upon divorce. The method involves freezing the pension benefit as of the date of divorce, a rule which only five states have adopted. Congress amended the USFSPA in 2016 to require this division by all courts. This is an area where the states have primacy and where Congress has traditionally opted for a restrained and refined rule when it passes legislation in the family law field. As James Madison wrote in *The Federalist* No. 45, "The powers delegated by the proposed Constitution to the federal government are few and defined. Those which are to remain in the State governments are numerous and indefinite." The statutory amendment is an unwise exercise of authority which will set aside the rules for pension division in 40-45 states (in military cases) for no good reason, no purpose of substantial importance which would justify requiring local and state judges to adopt a single uniform method as to how this one asset would be divided in divorce court.

3. Please Explain How the Proposed Policy Position Will Address the Issue

The proposed policy will influence the U.S. Senate and House of Representatives to modify or repeal the amendment to USFSPA.

4. Summary of Minority Views or Opposition Internal and/or External to the ABA Which Have Been Identified

We are aware of no minority views within the ABA or any external opposition.
RESOLUTION

RESOLVED, That the American Bar Association supports an interpretation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-2(a), that its prohibition on sex discrimination in employment by covered employers includes discrimination on the bases of sexual orientation and gender identity; and

FURTHER RESOLVED, That the American Bar Association urges the Attorney General of the United States to withdraw the interpretation proposed by the U.S. Department of Justice in October 2017 that Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e-16(a), does not protect transgender citizens against workplace discrimination.
EXECUTIVE SUMMARY

1. Summary of the Resolution

The Resolution will establish policy that sex discrimination in employment prohibited by Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e et. seq., includes discrimination on the bases of (1) sexual orientation and (2) gender identity.

2. Summary of the Issue that the Resolution Addresses

The Resolution addresses a split of interpretations on the application of Title VII’s prohibition of sex discrimination to claims of discrimination by (1) lesbian, gay, and bisexual individuals challenging discrimination on the basis of their sexual orientation and (2) transgender individuals challenging discrimination on the basis of their gender identity.

3. Please Explain How the Proposed Policy Position Will Address the Issue

The Resolution clarifies and emphasizes the ABA’s position on employment discrimination on the bases of sexual orientation and/or gender identity and more fully enables the ABA Governmental Affairs Office, the ABA President, and the Standing Committee on Amicus Curiae Briefs to act.

4. Summary of Minority Views

No opposing views have been expressed by other ABA entities or organizations as of the preparation of this summary. The Section will work with other ABA entities, as necessary, on wording and scope of this Resolution.
RESOLUTION

1 RESOLVED, That the American Bar Association urges Congress to enact legislation
2 overruling Middlesex County Sewerage Auth. v. Nat’l Sea Clammers Ass’n, 453 U.S. 1 (1981);
3 and
4
5 FURTHER RESOLVED, That the American Bar Association supports legislation enabling
6 plaintiffs to bring constitutional claims in lieu of a statutory cause of action based upon
7 environmental harm due to governmental acts or omissions.
EXECUTIVE SUMMARY

1. Summary of the Resolution

In this Resolution, the American Bar Association urges Congress to enact legislation overruling Middlesex County Sewerage Auth. v. Nat’l Sea Clammers Ass’n, 453 U.S. 1 (1981) and further, that the American Bar Association supports legislation enabling plaintiffs to bring constitutional claims in lieu of a statutory cause of action based upon environmental harm due to governmental acts or omissions.

2. Summary of the Issue that the Resolution Addresses

Lower courts have applied the Middlesex holding inconsistently, in some cases severely limiting relief to plaintiffs suffering environmental harm. This resolution urges a legislative solution to this inconsistency, clarifying that § 1983 relief is available for violations of the FWPCA and the MPRSA.

3. Please Explain How the Proposed Policy Position will address the issue

ABA policy would support legislation to make clear that § 1983 claims under these statutes would be cognizable, allowing greater access to justice for communities suffering from environmental harm.

4. Summary of Minority Views

There are no known conflicts of interest.
RESOLVED, That the American Bar Association urges federal, state, local, territorial, and tribal courts to recognize that service in the United States Armed Forces should not be restricted and individuals should not be discriminated against on the basis of sexual orientation or gender identity; and

FURTHER RESOLVED, That the American Bar Association urges federal courts to hold that the policies and directives encompassed in President Donald J. Trump’s Memorandum for the Secretary of Defense and the Secretary of Homeland Security, dated August 25, 2017, and entitled “Armed Forces Service by Transgender Individuals,” violate the Equal Protection and Due Process clauses of the Fifth Amendment of the United States Constitution.
EXECUTIVE SUMMARY

1. Summary of the Resolution

The Resolution will establish policy to recognize that service in the United States Armed Forces should not be restricted and that members should not be discriminated against based on one’s sexual orientation or gender identity.

2. Summary of the Issue that the Resolution Addresses

The Resolution addresses a number of factors that were outlined by the current administration as reasons why the United States Government will reverse course and not accept or allow transgender individuals to serve in any capacity in the U.S. Armed Forces.

3. Please Explain How the Proposed Policy Position will Address the Issue

The Resolution clarifies and emphasizes the ABA’s position on discrimination by the United States Government on the bases of sexual orientation and/or gender identity and more fully enables the Governmental Affairs Office, the ABA President, and the Standing Committee on Amicus Curiae Briefs to act.

4. Summary of Minority Views

None.