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SPONSOR: Edward Haskins Jacobs

PROPOSAL: Amends §1.2 of the Constitution to include the following language as one of the purposes of the Association: “to defend the right to life of all innocent human beings, including all those conceived but not yet born.”

Amends §1.2 of the Constitution to read as follows:

§1.2 Purposes. The purposes of the Association are to uphold and defend the Constitution of the United States and maintain representative government; to defend the right to life of all innocent human beings, including all those conceived but not yet born; to advance the science of jurisprudence; to promote throughout the nation the administration of justice and the uniformity of legislation and of judicial decisions; to uphold the honor of the profession of law; to apply the knowledge and experience of the profession to the promotion of the public good; to encourage cordial intercourse among the members of the American bar; and to correlate and promote the activities of the bar organizations in the nation within these purposes and in the interests of the profession and of the public.

(Legislative Draft - - Additions underlined; deletions struck-through)

§1.2 Purposes. The purposes of the Association are to uphold and defend the Constitution of the United States and maintain representative government; to defend the right to life of all innocent human beings, including all those conceived but not yet born; to advance the science of jurisprudence; to promote throughout the nation the administration of justice and the uniformity of legislation and of judicial decisions; to uphold the honor of the profession of law; to apply the knowledge and experience of the profession to the promotion of the public good; to encourage cordial intercourse among the members of the American bar; and to correlate and promote the activities of the bar organizations in the nation within these purposes and in the interests of the profession and of the public.
Report
to the
House of Delegates
of the
American Bar Association
by
Edward Haskins Jacobs

On a Proposal to Amend the ABA Constitution
to
Add this as a fundamental ABA purpose:

To defend the right to life of all innocent human beings,
including all those conceived but not yet born.

For consideration at the August 14 and 15, 2017 Annual Meeting

The undersigned proposes that the American Bar Association Constitution, Article 1, Section 1.2 - Purposes - be amended by inserting the following language (between the quotation marks) after the first semicolon: “to defend the right to life of all innocent human beings, including all those conceived but not yet born;”.

Article 1 of the ABA Constitution is entitled “Name and Purposes.” Section 1.2 is entitled “Purposes.” Once amended, section 1.2 would read in full as follows:

The purposes of the Association are to uphold and defend the Constitution of the United States and maintain representative government; to defend the right to life of all innocent human beings, including all those conceived but not yet born; to advance the science of jurisprudence; to promote throughout the nation the administration of justice and the uniformity of legislation and of judicial decisions; to uphold the honor of the profession of law; to apply the knowledge and experience of the profession to the promotion of the public good; to encourage cordial intercourse among the members of the American bar; and to correlate and promote the activities of the bar organizations in the nation within these purposes and in the interests of the profession and of the public. [The new language is in bold for the purpose of highlighting.]

Once again, God willing, I will move for the adoption of this proposal at the House of Delegates in New York City in August 2017. I made the same motion before the House of Delegates the last sixteen years in a row. My hope continues that some day our culture of death will be overcome. We lawyers must not turn a blind eye to our children being poisoned to death and torn apart in our midst. I may be crying in the wilderness, but the cry – and the thirst for justice it represents - will never die.
If adopted, the proposal would require the American Bar Association to stand up for the God-given right to life of all innocent human beings, a right that must be protected in the man-made law of all just societies. As Alexander Hamilton wrote, “Hence, in a state of nature, no man had any moral power to deprive another of his life, limbs, property or liberty; nor the least authority to command, or exact obedience from him; except that which arose from the ties of consanguinity. . . . The principal aim of society is to protect individuals, in the enjoyment of those absolute rights, which were vested in them by the immutable laws of nature; but which could not be preserved, in peace, without that mutual assistance, and intercourse, which is gained by the institution of friendly and social communities. Hence it follows, that the first and primary end of human laws, is to maintain and regulate these absolute rights of individuals. Blackstone. . . . The sacred rights of mankind are not to be rummaged for, among old parchments, or musty records. They are written, as with a sun beam in the whole volume of human nature, by the hand of the divinity itself, and can never be erased or obscured by mortal power.”

In none of the meetings of the House of Delegates where this proposal was considered was there an actual vote on the proposal. The first ten times, after the presentation of the proposal, the Standing Committee on Constitution and Bylaws reported to the House that the proposal is inconsistent with another purpose of the ABA - to uphold and defend the Constitution of the United States - and that therefore the proposal was “out of order.” Each time the Committee made that bold assertion without explaining why it is so (despite my explicit written request to the Committee in each of the last several years to explain in writing why this position is taken). And in each of those ten meetings, then a motion was made that the House postpone indefinitely action on my proposal. In 2010, Robert L. Weinberg from Washington, D.C., who disagrees with this proposal, nevertheless tried to get the House to vote directly on the proposal, but his motion was rejected. Bob made the same effort twice more, in 2013 and 2015.

In 2011, the Committee chairperson reported to the House that the Committee took no position on the merits of the proposal that the ABA defend the right to life of all innocent human beings, including those conceived but not yet born, but stated that the Committee disagreed that this subject should be addressed in the purposes section of the ABA constitution, since the constitution does not adopt policy “beyond the basics”; and as a result, clearly by arrangement with the Committee, another member of the

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2 Of course, even if the proposal were voted upon and rejected, it could continue to be made year after year, into the future.

3 In 2001 by a non-committee member of the House, and in each time thereafter by the Committee representative himself or herself until 2016, when the motion to postpone indefinitely was made by a member of the ABA Board of Governors.
House rose to move that the proposal be postponed indefinitely, and this was overwhelmingly approved by voice vote, with maybe only about five or so “nays” as far as I could tell.

In 2012, the Committee chairperson said that the proposal is inconsistent with other purposes of the Association and should be rejected, but he did not state why he concluded that the proposal is inconsistent with other purposes of the Association and did not specifically mention any of the inconsistent purposes. Then someone else moved, not that the proposal be rejected as suggested by the Chairperson, but rather that the proposal be postponed indefinitely. In the voice vote then taken, I’d say about 10 delegates opposed the motion, some quite vociferously. By overwhelming voice vote, the proposal was postponed indefinitely.

In 2013, Bob Weinberg opposed the motion to postpone indefinitely, arguing for a vote on the proposal itself; and another delegate, who also seemed to be opposed to the proposal, rose to say he agreed it should be voted on, and stated that the ABA can take positions on “moral issues,” and said the proposal is not inconsistent with upholding and defending the Constitution of the United States - such supposed inconsistency being the reason given for postponing action on the proposal year after year after year. That year there were many “nayes” on the vote to postpone indefinitely - probably because more delegates wanted to vote the proposal down directly - but upon the voice vote that the ayes had it, and the proposal was again postponed indefinitely on the extraordinarily odd contention that defending the right to life of all innocent human beings is inconsistent with upholding and defending the Constitution of the United States. What a perverse Constitution we must have!

In 2014, the Chair of the Standing Committee on Constitution and Bylaws said the proposal is “out of order and inappropriate” and a non-committee member of the House moved to postpone the proposal indefinitely. Although a House member rose to “bark at the moon,” seeking a vote on the proposal instead of postponing it; postponed it was, with maybe ten voice votes against. In 2015, three speakers raised the red herrings that the proposal asks the House to address not a legal issue, but rather a medical, theological, or a philosophical issue; or simply an issue of legal privacy, as reasons to postpone the issue indefinitely; or in Bob’s case, to reject it on its merits. In 2016, the chair of the Standing Committee again asserted the proposal is inconsistent with ABA purposes to uphold and defend the Constitution of the United States and representative government, and said the proposal should be proposed as a ABA policy position only, and a member of the ABA Board of Governors moved that the proposal be postponed indefinitely.4

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4 If the proposal to defend the right to life of all innocent human beings is inconsistent with the ABA purposes (1) to uphold and defend the Constitution of the United States, and (2) to uphold and defend representative government, as the ABA Standing Committee on Constitution and Bylaws has repeatedly claimed, why does it make any sense to downgrade the proposal and make it as simply a proposed policy position of the ABA, instead of an ABA constitutional provision? If defending the right to life of all innocent human beings is inconsistent with the ABA purposes of upholding and defending the Constitution of the United States and upholding and defending representative government, as the
In 2001 the vote on the motion to postpone action indefinitely was 209 to 39, but you will never find the precise vote in the record of proceedings of that meeting, because even though the vote was displayed electronically on a large screen in the front of the room, the precise vote itself was not recorded. In 2002 through 2016 the vote on the motion to postpone indefinitely was taken by voice vote. In 2002 through 2015, with the noted exception of 2013, many uncounted voices intoned “yes,” and perhaps a hand full of people said “no,” except 2005, when I thought I heard maybe ten “no”s.

I want to see the House pass this proposal, but I realize passage now would take a miracle. This is driven home in each when new members of the House who have never been members before stand up in order to be introduced to the assemblage. Each year there are well fewer than twenty new members. And the House several years ago defeated a term limits proposal. It would seem, then, that the House of Delegates is a pretty closed club with lots of long-term members. In addition to looking for that miracle, I am also hoping that the consciences of a few of the members will be pricked enough that they will be willing to “submit a salmon slip” and stand up in the House and speak out for the right to life of the innocents in the face of embarrassment and possible ostracism.

I would say perhaps the most amazing thing about the last sixteen years is that never once has any member of the House of Delegates submitted a salmon slip and stood up before the House to acknowledge the ABA must make it its mission to defend the right to life of all innocent human beings. Not once. Not a single person, ever.

Even if I have no chance short of a miracle for passage of the proposal, if we can just “get the ball rolling” with a little bit of courage from members who agree, who knows? The ABA House of Delegates is a speck, but an important speck in the process.

Standing Committee keeps claiming, then how can the proposal possibly be appropriate as an ABA policy on a national issue? Shouldn’t the proposal be postponed indefinitely as a proposed policy position also if the Committee is right? So why should I seek its approval as a mere policy proposal? Of course, the Committee is wrong about this claimed inconsistency, and this is explained later in this report.

Although the ABA has an annual budget of over $200 million, the House of Delegates is not willing to commit the relatively minor sum it would take in order to bring transparency and accountability to the actions of the House by having every member’s vote electronically recorded when it deals with the most important matters, such as amendments to the ABA constitution or bylaws, and the adoption, amendment, or rescission of ABA policy positions. In 2001, I presented to the ABA House of Delegates a proposal to bring that transparency and accountability to the House and to have the results posted for a year on the ABA website. It failed miserably, with only about ten of the 500 or so in attendance voting in favor (based upon my guestimate at the time of the voice vote). Transparency in actions of the House of Delegates should be pressed for every year until it is reached, but for now at least I leave that to others. In 2005 the chairperson of the House mentioned in his remarks that he, too, thinks the House should have electronic voting. And it would not take much money to bring accountability to the House of Delegates.

At a CLE program in the Virgin Islands several years ago, hand-held voting devices were given to the attendees to make part of the program interactive, so it cannot be very expense, even if the individual votes, tied to specific members, are permanently recorded as part of the process. It is amazing in this day and age that the ABA House of Delegates is utterly opaque. The House intentionally refuses to put in place systems to reveal the votes of its members on the many important issues upon which it takes positions. No doubt the members of the House demand transparency of others in other contexts. The opaque nature of the House is indefensible. Amazing, really.
Maybe before too many more years baby-killing-in-the-womb (or upon emergence from the womb) will go the way of slavery. It could happen.

“My section [bar association, committee, etc.] does not want its representative to vote on this kind of social issue” is not a legitimate position to take, is it? The House of Delegates addresses these kinds of issues dealing with human rights and legislative proposals every annual meeting. The current ABA policy manual includes these still-current policies of the ABA, each of which proclaims that the ABA: (1) Supports legislation on the federal and state level to finance abortion services for indigent women (adopted August 1978); and (2) Supports state and federal legislation which protects the right of a woman to choose to terminate a pregnancy before fetal viability, or thereafter, if necessary to protect the life or health of the woman.; and opposes state or federal legislation which restricts this right. (adopted August, 1992). Other related and likely still current ABA policies are listed toward the end of this report.

The representative of your section, etc., must be ready to address fundamentally important legal issues if your section, etc., is to be fully represented in the House. If you are not up to taking on this mantle as a fully functioning delegate to the House, shouldn’t you resign your position? Please, stand up and be counted. If you don’t, won’t you regret it in the end, when you look back on your life seeking evidence of courage? I write as I do in this paragraph because I cannot believe that only ten members of the House, or fewer, recognize the obvious truth of my argument. So, once again, on to the meat of the issue:

Feminism - here meaning the conviction that women’s government-enforced rights and privileges have been neglected in the past and now need augmentation - begs the question, how far should women’s “rights” go? If you are a mother with a child in your womb, and if bearing your child to term or keeping your child after birth would be embarrassing, inconvenient, career-killing, poverty-causing, husband-limiting, depressing, or physically more than normally risky, do you have the right to kill your child as a legally-approved exit from motherhood, as long as you do it before your child fully emerges from the protection of your body? Or does your child, by her mere humanity, have a sacrosanct right to live, and continue to develop and grow in liberty and pursue happiness as she comes to know it? The answer: Human life, including that of our littlest ones, is sacred. This realization was one of the greatest advances of Christianity over the paganism that condoned exposing unto death the unwanted child. Abortion in our society is quicker than exposure, and is hidden away in the womb (or at the end of the birth canal) so that we can lie to ourselves about what we are doing. But respect for innocent human life must be fundamental to civilized society, as “Thou Shalt Not Kill” signifies.

We should know that human life is sacred and to be defended against all competing claims of “right.” Our nation’s declaration of birth - the Declaration of Independence of July 4, 1776 - set forth the raison d’etre for the United States of America as a separate nation. The Declaration asserted that it is self-evident that all men are
endowed by their Creator with the unalienable right to life; and that governments are
instituted among men to secure the rights to life, liberty, and the pursuit of happiness.
This insistence upon governmental protection of the right to life of all innocent human
beings must be a fundamental function of any legitimate government.

The Creator referenced in the Declaration of Independence chose to have each new
child begin life within his or her mother. The child in the womb has her own unique
set of DNA. She is a separate human being - not simply part of her mother. On April 23
and 24, 1981 a United States Senate Judiciary subcommittee held hearings on the
question: When does life begin? The internationally known group of geneticists and
biologists had the same conclusion - life begins at conception.

The stories one hears about mothers on their way to have a child in the womb poisoned
to death or ripped apart by an abortionist, suddenly having a change of heart when they
see a another mother walking by holding and cuddling her baby, or seeing a poster of a
baby with the words “Abortion kills,” are heart-warming, but they also underscore how
the general discussion of the abortion problem in the media depersonalizes the separate
human being held by God’s design in the vessel of her mother. That’s another, separate
human being in there - one who has the right to life, liberty, and the pursuit of happiness,
just as we do, no matter how deeply we stick our heads in the sand.

Shouldn’t we recognize the zygote, the embryo, the fetus in the womb of a human mother
as another human being - one who has rights? I recommend you check out the website
for the journal First Things and click through to “Condic” in the authors search box. You’ll
find several articles by Maureen L. Condic, an associate professor of neurobiology and
adjunct professor of pediatrics at the University of Utah School of Medicine. She points
out (in her May 2003 article, “Life: Defining the Beginning by the End”) that the common
arguments about when human life begins are only of three general types: arguments
from form, arguments from ability, and arguments from preference, and that these
arguments are all highly subjective, amounting to arguments that the new organism
growing in the womb is not a human being worthy of protection in law because it is tiny,
or because it is not a “person,” or because it is early in its development.

Dr. Condic rightly rejects the use of these three flawed arguments about when life begins.
Instead, she cogently argues that we should determine when the new human organism
begins, because that is the true beginning of the human being. She points out that one
must distinguish between mere living cells that are not organized into an organism,
and living organisms. Dr. Condic points out that “[o]rganisms are living beings
composed of parts that have separate but mutually dependent functions. While
organisms are made of living cells, living cells themselves do not necessarily constitute
an organism. The critical difference between a collection of cells and a living organism
is the ability of an organism to act in a coordinated manner for the continued health and
maintenance of the body as a whole. ... Unlike other definitions, understanding human
life to be an intrinsic property of human organism does not require subjective
judgments regarding ‘quality of life’ or relative worth. A definition based on the
organismal nature of human beings acknowledges that individuals with differing
appearance, ability, and ‘desirability’ are, nonetheless, equally human. ... Once the nature of human beings as organisms has been abandoned as the basis for assigning legal personhood, it is difficult to propose an alternative definition that could not be used to deny humanity to virtually anyone.” The zygotes, the embryos, the fetuses in the wombs of human mothers are all human organisms; that is to say, human beings.6

But can any of us, with what we know about the child’s unique set of DNA beginning at conception, even pretend now that this is not true? The possibility of twinning does not diminish the recognition that upon conception there is brand new, separate, unique human life in the mother’s body – a new person or persons. The mother is responsible for taking care of that child, but she does not own the child – God does. Slavery made the mistake of thinking that one human being can own another. We now know that no man should be permitted under man’s law to own another. But how can one justify killing another innocent human being if one does not own him? The inconvenience and burden of the other’s life on one’s own is not enough. The burden of the dependent relation does not end at the birth canal. How far should the right to kill those dependent upon us go? Should the standard evolve from the complete dependence of the womb to the excessive dependence of severe mental retardation and severe physical handicaps?

Just because the child is held and nourished within her mother does not give her mother the right to kill her. To the contrary, the mother with a child in the womb has a special responsibility to protect and care for her child. The generally recognized principle that parents must take care of their children once they are born applies as well to the children while they are growing and developing in the womb. I am not judging here the status of the soul of those who have had abortions or who commit abortions. I leave that (and the judging of my own soul) to God. But what we must judge as a people is what actions are so intrinsically evil, and do such harm to others who are innocent of wrongdoing (such as killing them), that the State, any decent State, must prohibit those actions from being inflicted on their victims. Obviously, the baby in the womb is the victim of abortion.

I do not want to offend the women who have been bamboozled by our abortion culture, but is not abortion the ultimate hate crime - the turning of legendary motherly love to the hatred of, and the killing of, one’s own child? Perhaps it is indifference to the child rather than hatred of the child, but this may be worse in its own way, as they say the opposite of love is not hate, but apathy.

6 In her May 23, 2013 testimony before the Committee on the Judiciary of the U. S. House of Representatives on H.R. 1797, which would require a 20 week fetus to be protected from pain, Dr. Condic noted that “it is entirely uncontested that a fetus experiences pain in some capacity, from as early as 8 weeks of development.” She further noted, “Imposing pain on any pain-capable living creature is cruelty. And ignoring the pain experienced by another human individual for any reason is barbaric.” Dr. Condic went on to note, “Given that fetuses are members of the human species - human beings like us - they deserve the benefit of the doubt regarding their experience of pain and protection from cruelty under the law.” [Italics in original.]
Motherly love was known through the centuries until recently as the gold standard of love – unselfish and without limit – the willingness to give one’s very life for one’s child. Remember the question from Isaiah 49: 14-15, attesting to this love. Motherly love is the foundation for a culture of life. Abortion is the foundation for our culture of death. Speaking of being bamboozled, recall the serpent in the Garden of Eden, enticing Eve to eat the forbidden fruit on the promise that she would become like God. Now mothers are enticed into abortion with the lie that they can become like men, and needn’t be burdened with child in the womb or that child after birth. Eat the fruit of hatred of the life of your child and abandonment of your child and freedom is yours. A Faustian bargain if ever there were one.

The United States of America fails in its fundamental mission if it refuses to secure for the weakest and most vulnerable innocent people amongst us the rights to life, liberty, and the pursuit of happiness. The ABA fails in its mission if it fails to stand up for the rights of the powerless. If we deny the right to life for children in the womb because they are developmentally immature (and therefore, in the eyes of some, not “persons”), then we not only tragically deny these children their rights - we open the door to infanticide and the killing of other weak and infirm people. There is a crisis in the United States over the loss of our moral roots. The ABA, which claims to be the voice of the legal profession, and to be an advocate of the protection of fundamental rights, should become a strong voice for all the weak and vulnerable innocents who so desperately need champions now.

We would do well also to realize that the Constitution of the United States - and the Supreme Court’s interpretation of it - is not the fundamental source of human rights within the United States. Our rights to life, liberty, and the pursuit of happiness do not arise out of our own “social contract” - the Constitution. To the contrary, as the Declaration asserts, these rights are endowed upon us by our Creator. The rights of the child are a burden to the mother, but fundamental rights of others are a burden we must bear.

At the 2001 Annual Meeting, the Chair of the Standing Committee on Constitution and Bylaws reported that the Committee “voted to recommend to the House that the proposal be considered out of order, in that it is inconsistent with the first purpose clause of Association’s Constitution, which is ... ‘To uphold and defend the Constitution of the United States and maintain representative government.”’ The same claim was made in subsequent years, until 2011, when the Committee took no position “on the merits of the proposal,” but asserted the proposed language does not merit inclusion in the purposes section of the ABA constitution. Then in 2012 the Committee said the proposal should be rejected due to unexplained inconsistencies with other Association purposes.

Although the Committee changed its position in 2011, it went back to the earlier position in later years, so I hereafter explain again why defending the right to life of all innocent

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Note: The document contains a footnote indicating the importance of recognizing the innocence and humanity of children being aborted. It points out that the committee's position over the years has been inconsistent and that the realization of the children's innocence and humanity is a critical step in defending their rights.
human beings, including all those conceived but not yet born, is consistent with supporting and defending the Constitution of the United States. Later in this report I explain why the language I propose does belong in the purposes section of the ABA constitution, which positioning has also been opposed by the Standing Committee on Constitution and Bylaws.

So, the inconsistency contention has no merit. First the obvious: Nowhere does the actual language of the United States Constitution specify that the States may not defend the right to life of each and every innocent human being within their respective jurisdictions (including all those conceived but not yet born). So the claim that the defense of such life is inconsistent with defending and upholding the Constitution is on its face highly suspect. If the inconsistency argument does not rest on the actual language of the Constitution, let us go beyond the actual language of the Constitution and try to articulate the argument.8 The inconsistency argument could be so stated:

1. *Roe v. Wade, Doe v. Bolton,* and *Planned Parenthood v. Casey* prohibit each State from defending the right to life of each and all innocent human beings conceived but not yet born, within the State’s jurisdiction.

2. The Supreme Court has determined that the Constitution’s penumbra of privacy rights attendant to the pregnant mothers is what prohibits the States from defending the right to life of each and all those conceived but not yet born.

3. Therefore, it is the Constitution itself that prohibits the defense by the States of the right to life of all those conceived but not yet born.

4. Therefore, advocating the defense of the right to life of all those conceived but not yet born is inconsistent with upholding and defending the Constitution since the Constitution prohibits that defense.

But it cannot be reasonably be said (1) that the holdings of *Roe v. Wade* and *Doe v. Bolton,* as modified by *Planned Parenthood v. Casey* are the Constitution itself - and (2) that if one opposes *Roe, Doe,* and *Planned Parenthood,* one is opposing the Constitution itself - and failing to uphold and defend it. The lack of identity of particular Supreme Court interpretations of the Constitution with the Constitution itself should be rather self-evident. No doubt you (the members of the House) are aware that legal conclusions underlying many Supreme Court decisions - including those interpreting the Constitution - have been rejected by later Supreme Court decisions although the relevant language of the Constitution has not changed in the interim. Thus, generally, contending that opposition to a particular Supreme Court interpretation of the Constitution constitutes opposition to the Constitution itself is stretching language and

8 Like St. Thomas Aquinas, I construct the argument against my position. I have repeatedly asked the Standing Committee on Constitution and Bylaws to articulate the reason for its - to me, bizarre – position that taking a stance defending the right to life of all innocent human beings including all those conceived but not yet born is somehow inconsistent with upholding and defending the Constitution of the United States, but the Committee refuses to articulate the reasons for its position – either orally or in writing.
logic to the breaking point.

Now, maybe a persuasive argument could be made that although some Supreme Court interpretations of the Constitution are subject to later change, some are so indisputably correct that in some real sense the interpretation could be said to be the Constitution itself. If the Supreme Court rationale for Roe v. Wade, Doe v. Bolton, and Planned Parenthood v. Casey were so rock-solid and accepted by American society in general as the proper articulation of a virtually undisputed fundamental individual right grounded in the Constitution, one could argue that in effect these Supreme Court decisions are equivalent to the Constitution; but that is certainly not the case with Roe v. Wade, Doe v. Bolton, and Planned Parenthood v. Casey. (And note that Planned Parenthood itself modified fundamental holdings of Roe and Doe.)

The truth is quite to the contrary of the position of the Standing Committee on Constitution and Bylaws. The reality is that the rationale underlying these two Supreme Court decisions deserves no support from an organization pledged to uphold and defend the Constitution of United States. This is because the underlying rationale for the decisions is bogus, even if one accepts the concept of the privacy rights penumbra. The Supreme Court’s opinion in Roe v. Wade takes the position that neither Texas nor any other State may legislatively determine that human life begins at conception, since (the Court asserted) there is uncertainty over the legitimacy of that claim - that human life does begin at conception. But this claimed uncertainty is a figment of the Supreme Court’s imagination. There is no real uncertainty over the point at which each human life begins - we all have our own unique set of 46 chromosomes. This set is forged at the moment of conception. The new child (or, perhaps, eventually, the new twins) is new human life - residing within the child’s mother, but not simply a part of her.

Based on the faulty contention that the child in the womb cannot properly be legislatively determined to be a human being, the Supreme Court denigrated the child to the status “potential life,” stripping the child of her rightful status under the law as a human being. The Court then set up a false dichotomy of competing rights: the mother’s “right to privacy” right to kill the non-human blob in her womb verses the State’s interest in protecting the “potential life” in the womb and the health of the mother. (Referring to a living being with its own DNA as “potential life” is doublespeak

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9 As one wise observer has noted, “Roe v. Wade has deformed a great nation. The so-called right to abortion has pitted mothers against their children and women against men. It has sown violence and discord at the heart of the most intimate human relationships. It has aggravated the derogation of the father’s role in an increasingly fatherless society. It has portrayed the greatest of gifts –a child– as a competitor, an intrusion, and an inconvenience.... Human rights are not a privilege conferred by government. They are every human being’s entitlement by virtue of his humanity. The right to life does not depend, and must not be declared to be contingent, on the pleasure of anyone else, not even a parent or a sovereign.”

10 Nor does basing a supposed constitutional right to abortion upon the Equal Protection Clause of the Fourteenth Amendment (“...nor shall any State ... deny to any person within its jurisdiction the equal protection of the laws.”) to the United States Constitution, as advocated by Justice Ginsburg and three other Justices in the Ginsburg dissent in Gonzales v. Carhart, 550 U.S. 124, 172 (2007) make any more sense. The child in the womb is still a human being, a child, and her right to life trumps the mother’s interest in having her killed, whether based on a supposed right to privacy or upon the Equal Protection
at its best.) The hand dealt the child in the womb by the Supreme Court was dealt from a stacked deck - based upon the lie that the child in the womb is not really a child. As a “potential life” rather than a real, live human being, the child’s real rights get pushed aside by the Supreme Court. The rationale of Roe v. Wade is not indisputable (and thus, one might argue, the Constitution itself); rather, the rationale of Roe v. Wade is fatuous.

Finally, the proposal (and all already articulated purposes in ABA Constitution Section 1.2) presupposes the ABA defense of the right to life of the innocents will be undertaken by lawful means. Suppose the ABA as an organization were to advocate a change through lawful means in the language of the United States Constitution (or in a Supreme Court interpretation of the Constitution). Would this mean the ABA had abandoned its purpose to uphold and defend the Constitution? Of course not. We have an obligation to address constitutional issues that need addressing. We honor the Constitution by doing so. So, even if I were advocating change in the language of the Constitution by lawful means, my proposal would not conflict with the ABA purpose to uphold and defend the Constitution.

In 2011 and at other times, the Committee on Constitution and Bylaws has suggested that what I advocate is a policy position for the ABA, not a purpose of the ABA, and therefore my proposal should be rejected on the ground that it does not belong in Section 1.2 of the ABA Constitution. I disagree with this contention also. After all, what is a purpose? A purpose is simply a fundamental policy. The innocent human beings in the wombs of their mothers (many of whom have become mortal enemies of their own children) cry out for our country to renew its commitment to the basic principles of the Declaration of Independence - that every innocent human being has the right to life, liberty, and the pursuit of happiness. And it is not just the innocents in the womb who cry out for champions. We are sliding down the slippery slope of disregard for the sanctity of human life for many outside the womb as well - the old, the infirm, and the disabled. If we do not wake up and start standing up for what is right, soon many of these innocents will have to be justifying why their lives should be spared - why we should be spending money and effort on their inconvenient and bothersome lives. The intentional killing of perhaps 1.2 million innocent human beings by abortion in the United States each year in recent years (and even more before) is such an affront to justice that the ABA should make defending the rights of those (and other) innocent beings one of its fundamental policies – one of its very purposes.

Remember the argument over the propriety of amending the U.S. Constitution with the Bill of Rights shortly after the approval of the Constitution itself? There were those who argued that it is unnecessary and inappropriate to articulate in the Constitution these rights of the people and of the States against intrusion by the federal government, since the federal government was permitted to exercise only those powers granted to it in the
Constitution anyway. But those rights articulated in those first ten amendments were considered so fundamental that they should be explicitly set forth in the Constitution itself.

Well, our country has abandoned its fundamental argument for its own formation when it denies to some innocents the inalienable God-given right to life itself, allowing others with the sanction of law to kill off innocents. This is a fundamental perversion of what the United States should be. The ABA should make the correction of this deviation one of its bedrock, fundamental policies — that is, one of its very purposes of being. The ABA goes on and on nowadays about its support of “the rule of law,” but where is that support when it comes to children in the womb? Where are their lawyers defending their rights? Where is the defense and pursuit of justice here?

The Committee claimed that the subject of the proposal is not fundamental enough — or is not of the right character — to be included in the purposes section of the ABA constitution. But compare a stance against stripping the right to life from millions of innocents to the purposes that are in the ABA constitution. Defending the right to life of innocents when it is being denied by our “law” is much more fundamental than even the upholding and defending of our hallowed U.S. Constitution and representative government. The ABA purpose I propose goes to the very heart of what an association of American lawyers should be all about. We are supposed to be the upholders of the law. We are supposed to champion those whose rights are being disrespected. Incredibly, a fundamental disrespect for a category of persons’ rights has been incorporated as a fundamental tenant of our American “law.” A stand against this cries out for inclusion in the purposes section of the ABA constitution.

Matters of much lower import and importance to our law and our role as lawyers are already included in the articulation of ABA purposes. My proposal is more fundamental than the ABA constitution existing purposes to “advance the science of jurisprudence”, “promote the uniformity of legislation and of judicial decisions”, “uphold the honor of the profession of law”, and to “encourage cordial intercourse among members of the American bar.” The Committee is wrong when it says that my proposal does not belong in the purposes section of the ABA constitution.

At the House of Delegates in August 2001, the speaker who advocated postponing the proposal indefinitely said that the proposal “changes fundamentally the purpose of the American Bar Association and the Constitution and Bylaws, and has ramifications over a wide array of policy that the Association has adopted and implemented.” I have reviewed the ABA Policy and Procedures Handbook and note here policy positions taken by the ABA that are, or may be regarded as, inconsistent with the proposal being made hereby.

The ABA Policy and Procedures Handbook lists hundreds of standing policies adopted by the ABA over the years, although action was taken at the 2001 meeting to “archive” some policies over ten years old, taking them off the list of current policy positions. Way
back in 1978, the ABA adopted a policy, still in the 2013-2014 Handbook, supporting federal and state legislation to “finance abortion services for indigent women.” In 1991, the ABA adopted a policy supporting legislation to promote “full counseling and referrals on all medical options” in federally funded family planning clinics. In 1992, the ABA adopted a policy, still in the 2013-2014 Handbook, opposing federal legislation restricting abortions prior to viability and thereafter if the abortion is “necessary to protect the life or health of the woman ... .” And in 1994, the ABA adopted a policy recommending that the United States, at the Fourth World Conference on Women in Beijing, China, in 1995, “actively support the inclusion in the Platform for Action of [e]ffective measures to accelerate the removal of the remaining obstacles to the realization of women’s basic rights.” At the annual meeting in 2001 the ABA adopted a policy provision opposing the Mexico City Policy, which prohibits overseas funding by the United States of nongovernmental organizations that provide abortion-related health or medical services. The ABA House of Delegates has also fairly recently adopted a policy implicitly approving government-funded killing of innocent human beings in their embryonic stage for stem cell and other research work.

If the proposal is adopted, inconsistent policies would be revoked by implication. Legal protection for all innocent human life is essential to a properly ordered society. Advocacy of such protection should be fundamental ABA policy.

In John F. Kennedy’s 1961 inaugural address he rightly said, “The rights of man come not from the generosity of the state, but from the hand of God.” Professor Robert P. George of Princeton University gave an address at Georgetown University the day after President Obama’s initial presidential inauguration. In urging his listeners to pray for an end to legal abortion in the United States, Professor George said, “We must ask God’s forgiveness for our great national sin of abandoning the unborn to the crime of abortion and implore His guidance and assistance in recalling the nation to its founding ideals of liberty and justice for all.”

Feel free to email me at edwardjacobs@yahoo.com.
Amend §6.8 of the Constitution to read as follows:

§6.8 Delegates from Affiliated Organizations. (a) The following organizations are entitled to be represented in the House of Delegates as affiliated organizations: The American Immigration Lawyers Association, The American Judicature Society, the American Law Institute, the Association of American Law Schools, the Association of Life Insurance Counsel, the Conference of Chief Justices, the Federal Bar Association, the Federal Circuit Bar Association, the Federal Communications Bar Association, the Federal Energy Bar Association, the Hispanic National Bar Association, the Judge Advocates Association, the Maritime Law Association of the United States, the National Asian Pacific American Bar Association, the National Association of Attorneys General, the National Association of Bar Executives, the National Association of College and University Attorneys, the National Association of Criminal Defense Lawyers, the National Association of Women Judges, the National Association of Women Lawyers, the National Bar Association, the National Conference of Bar Examiners, the National Conference of Commissioners on Uniform State Laws, the National Conference of Women's Bar Associations, the National Creditors Bar Association, the National District Attorneys Association, the National Legal Aid and Defender Association, the National Lesbian and Gay Law Association, the National Organization of Bar Counsel and the Native American Bar Association.

(b) Proposals may be made to amend this section to add any national organization of the legal profession as an affiliated organization. Any proposals seeking representation shall be considered initially by the committee of the House of Delegates having jurisdiction over credentials and admission, which shall make appropriate recommendations. An applicant for affiliation shall:

1. Have no fewer than 2,000 members of which no fewer than 50 percent shall be members of the American Bar Association, unless the provisions of this subsection (b)(1) are waived by a vote of two-thirds or 150, whichever is greater, of the members present and voting in the House of Delegates;

2. Not duplicate the objectives and activities of entities that are separately represented in the House of Delegates; and

3. By its affiliation enhance the effectiveness of the House of Delegates or the goals of the Association.

(c) The delegate from an affiliated organization shall be selected as that organization determines and shall be a member of the Association. Each delegate's term shall be two Association years, ending with the adjournment of the annual meeting in an odd-numbered year. If a vacancy occurs, the affiliated organization concerned
shall select and certify a successor to serve for the unexpired term. If there is no delegate registered from an affiliated organization for three consecutive meetings of the House, that organization is no longer entitled to be represented in the House of Delegates as an affiliated organization.

(Legislative Draft - - Additions underlined; deletions struck-through)

§6.8 Delegates from Affiliated Organizations. (a) The following organizations are entitled to be represented in the House of Delegates as affiliated organizations: The American Immigration Lawyers Association, The American Judicature Society, the American Law Institute, the Association of American Law Schools, the Association of Life Insurance Counsel, the Conference of Chief Justices, the Federal Bar Association, the Federal Circuit Bar Association, the Federal Communications Bar Association, the Federal Energy Bar Association, the Hispanic National Bar Association, the Judge Advocates Association, the Maritime Law Association of the United States, the National Asian Pacific American Bar Association, the National Association of Attorneys General, the National Association of College and University Attorneys, the National Association of Criminal Defense Lawyers, the National Association of Women Judges, the National Association of Women Lawyers, the National Bar Association, the National Conference of Bar Examiners, the National Conference of Commissioners on Uniform State Laws, the National Conference of Women's Bar Associations, the National Creditors Bar Association, the National District Attorneys Association, the National Legal Aid and Defender Association, the National Lesbian and Gay Law Association, the National Organization of Bar Counsel and the Native American Bar Association.

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(1) Have no fewer than 2,000 members of which no fewer than 50 percent shall be members of the American Bar Association, unless the provisions of this subsection (b)(1) are waived by a vote of two-thirds or 150, whichever is greater, of the members present and voting in the House of Delegates;

(2) Not duplicate the objectives and activities of entities that are separately represented in the House of Delegates; and

(3) By its affiliation enhance the effectiveness of the House of Delegates or the goals of the Association.

(c) The delegate from an affiliated organization shall be selected as that organization determines and shall be a member of the Association. Each delegate’s term shall...
be two Association years, ending with the adjournment of the annual meeting in an odd-numbered year. If a vacancy occurs, the affiliated organization concerned shall select and certify a successor to serve for the unexpired term. If there is no delegate registered from an affiliated organization for three consecutive meetings of the House, that organization is no longer entitled to be represented in the House of Delegates as an affiliated organization.
The effect of this proposed amendment to §6.8 of the ABA Constitution would be to include The National Creditors Bar Association as an affiliated organization with representation in the House of Delegates. The National Creditors Bar Association would thereby join the other unique national specialty bar associations as an affiliated organization, thus furthering the American Bar Association's commitment to encourage greater access to and participation for the national bar associations in the ABA.

**Background**

The National Creditors Bar Association is a non-profit voluntary association established in 1993 by creditors rights attorneys primarily practicing in the field creditors rights law. The National Creditors Bar Association serves as the voice and the education specific source for creditors rights attorneys and other attorneys practicing creditors rights law in sixteen (16) different areas of the law on issues affecting any form of creditor currently throughout the nation, Canada, Puerto Rico and the United Kingdom. The National Creditors Bar Association facilitates communication among many creditors rights attorneys. The National Creditors Bar Association has filed numerous amicus curiae briefs in significant creditors rights law cases before United States Federal District Courts, United States Federal Circuit Courts, and the United States Supreme Court.

The National Creditors Bar Association is currently comprised of approximately 1,609 attorneys in just over 580 law firms. Through our membership expansion model created in 2015, the Association has increased new members by 62% from 2015 to 2016 and we are on track to continue with the same rapid growth in new members in 2017.

The National Creditors Bar Association meets semi-annually for a national Conference.

**The Practice of Law**

Like The National Creditors Bar Association, the ABA has long taken the position that “primary regulation and oversight of the legal profession should continue to be vested in the court of highest appellate authority of the state in which the attorney is licensed, not federal agencies or Congress, and...the courts are in the best position to fulfill that important function.” (See the ABA’s Legislative and Governmental Priorities web page titled “Independence of the Legal Profession, http://www.americanbar.org/advocacy/governmental_legislative_work/priorities_policy/independence_of_the_legal_profession.html). Towards that end, the ABA has consistently opposed “federal legislation or rules that would undermine traditional state court regulation of lawyers, interfere with the confidential attorney-client
relationship, or otherwise impose excessive new federal regulations on lawyers engaged in the practice of law.” *Id.*

The National Creditors Bar Association shares the ABA’s commitment to preserving the independence of the legal profession and has worked closely with the ABA Governmental Affairs Office to advance this important goal. For example, in recent months The National Creditors Bar Association and the ABA have met repeatedly to discuss strategies for advancing federal legislation known as the “Practice of Law Technical Clarification Act of 2017. (HR 1849)"

This important legislation, which was reintroduced in the 115th Congress on April 3, 2017, reinforces the principle that state courts and their state bar agencies—not federal agencies—are in the best position to regulate lawyers engaged in the practice of law and that laws to the contrary threaten the delicate balance in our judicial system. Attorneys are already supervised and regulated by the judicial branch and must adhere to the applicable rules of professional conduct, strictly follow federal and state laws and rules of procedure, and conduct themselves in a manner consistent with their responsibilities as officers of the court. Therefore, the legislation would clarify that the Fair Debt Collection Practices Act (FDCPA) does not apply to creditor lawyers engaged in litigation activities. In addition, the bill would expand the existing practice of law exemption in Section 1027(e) of the Dodd-Frank Act (which the ABA played a significant role in securing prior to final passage in 2010) to include both consumer lawyers and creditor lawyers.

**Additional Supporting Collaborative Activities with the ABA**

In the past 18 months, The National Creditors Bar Association:

- Worked closely with the ABA Governmental Affairs Office to oppose harmful federal legislation that would require many law firms and other personal service businesses to switch from the cash method of accounting to the accrual method and thus pay taxes on “phantom income” long before it is actually received (See the ABA’s Legislative and Governmental Priorities web page on “Mandatory Accrual Accounting for Law Firms,” [http://www.americanbar.org/advocacy/governmental_legislative_work/priorities_policy/independence_of_the_legal_profession/mandatory-accrual-accounting-for-law-firms.html](http://www.americanbar.org/advocacy/governmental_legislative_work/priorities_policy/independence_of_the_legal_profession/mandatory-accrual-accounting-for-law-firms.html));

- Continues to work closely with the ABA Membership Department to offer non-ABA members at our bar association a special membership package which benefits both organizations through additional member alliances and to encourage our members’ law firms to join the ABA’s Full Firm Membership Program;

- Participated as a Sponsor at the Summer 2016 ABA Business Law Section Meeting and Fall Business Law Section Meeting; and
• Promotes relevant ABA educational webinars to members of The National Creditors Bar Association.

Summary

For some time, The National Creditors Bar Association has desired affiliation with the American Bar Association. The National Creditors Bar Association recognizes the challenge of qualification under Section 6.8 of the ABA Constitution because it includes slightly less than 2,000 members. However, The National Creditors Bar Association is the largest bar association representing the universe of creditors rights attorneys, a legal specialty that mirrors the size of numerous other Affiliated Members. In addition, The National Creditors Bar Association does not duplicate the objectives and activities of any of the other entities that are separately represented in the House of Delegates. Therefore, it is important that this community of attorneys be a part of the ABA community consistent with the ABA’s “Goal IV - ADVANCE THE RULE OF LAW. Objective 5. Preserve the independence of the legal profession and the judiciary."

The National Creditors Bar Association and the ABA would both benefit from a closer relationship. It will ensure that the interests of both associations are advanced and that issues of common concern are addressed. The National Creditors Bar Association has many active members and leaders in a number of important ABA entities, including the Business Law Section and its Committees, as well as the ABA Senior Lawyers Division. A stronger bridge between the ABA and The National Creditors Bar Association will also increase the participation by Native American attorneys in the ABA by availing them of the myriad opportunities offered by ABA membership and involvement. It also will expose the ABA to the wealth of talent in The National Creditors Bar Association and create greater awareness of the issues creditors—from "mom and pop" small businesses to major corporations – face, while also helping the ABA to increase its number of dues-paying members.

Thank you for considering The National Creditor Bar Association’s application for Affiliated Organization status. If you have any questions or need more information, please do not hesitate to contact us.

Respectfully Submitted,

Mark Groves and Michael Glasser
SPONSORS: Carlos A. Rodriguez-Vidal (Principal Sponsor), Hon. John Preston Bailey, Sidney Butcher, M. Joe Crosthwait, Jr., Janet Green-Marbley, Eileen M. Letts, Ethan Tidmore, Mary L. Smith and Mary T. Torres

PROPOSAL: Amends §6.5(a) of the Association’s Constitution to indicate that if only six or fewer nominating petitions are filed for Delegates-at-Large to the House of Delegates, and no two are from the same state, territory or possession, no election shall be conducted and the Secretary shall certify to the Chair of the House that the nominees are elected. In addition, if a vacancy occurs and only one nominating petition is filed to fill the vacancy, no election shall be conducted and the Secretary shall certify to the Chair of the House that the nominee is elected.

Amends §6.5(a) of the Association’s Constitution to read as follows:

(Legislative draft: additions underlined; deletions struck through)

§6.5 Delegates-at-Large. (a) At each annual meeting the members of the Association registered for the annual meeting shall elect by ballot six members of the Association as Delegates-at-Large to the House of Delegates, no two of whom are accredited to the same state, territory or possession. A ballot on which the number of votes cast is more or less than six is void. Election is by a plurality of the votes cast. If only six or fewer nominating petitions are filed for Delegates-at-Large to the House of Delegates, and no two are from the same state, territory or possession, no election shall be conducted and the Secretary shall certify to the Chair of the House that the nominees are elected. In addition, if a vacancy occurs and only one nominating petition is filed to fill the vacancy, no election shall be conducted and the Secretary shall certify to the Chair of the House that the nominee is elected. The Board of Governors shall supervise the election.

(b) The term of a Delegate-at-Large is three Association years, beginning with the adjournment of the meeting during which elected.

(c) If a Delegate-at-Large resigns or dies, the members of the Association registered for the annual meeting shall elect at the next annual meeting a successor for the unexpired term.

(d) A Delegate-at-Large who fails to sign the House roster on or before the opening day of a meeting of the House at two successive sessions, shall no longer serve as delegate-at-large unless he/she provides a written statement of good cause for his/her absences to the House Committee of Credentials and Admissions and that Committee determines the absences should be excused. In the event the office becomes vacant, a successor shall be elected at the next annual meeting for the unexpired term.
REPORT

This housekeeping amendment proposes to amend §6.5(a) of the Constitution to state that if only six or fewer nominating petitions are filed for Delegates-at-Large to the House of Delegates, and no two are from the same state, territory or possession, no election shall be conducted and the Secretary shall certify to the Chair of the House that the nominees are elected. In addition, if a vacancy occurs and only one nominating petition is filed to fill the vacancy, no election shall be conducted and the Secretary shall certify to the Chair of the House that the nominee is elected.

This amendment will result in savings to the Association as no election will be necessary. Currently, the delegate-at-large election is conducted by a third party vendor which we will not be required to hire if no election is necessary if only six or fewer nominating petitions are filed. In addition, if there is a vacancy and only one nominating petition is filed to fill the vacancy, no election will be necessary.

Respectfully submitted,

Carlos A. Rodriguez-Vidal, Chair, Standing Committee on
Constitution and Bylaws
Hon. John Preston Bailey
Sidney Butcher
M. Joe Crosthwait, Jr.
Janet Green-Marbley
Eileen M. Letts
Ethan Tidmore
Mary L. Smith, Board Liaison
Mary T. Torres, Board Liaison

August 2017
SPONSORS: Carlos A. Rodriguez-Vidal (Principal Sponsor), Hon. John Preston Bailey, Sidney Butcher, M. Joe Crosthwait, Jr., Janet Green-Marbley, Eileen M. Letts, Ethan Tidmore, Mary L. Smith and Mary T. Torres

PROPOSAL: Amends §44.1(a) of the Association’s Constitution to include a “commission” as having the privileges of the floor of the House of Delegates

Amends §44.1(a) of the Association’s Constitution to read as follows:

(Legislative draft: additions underlined; deletions struck through)

§44.1 Privileges of the Floor. The privileges of the floor of the House of Delegates, without vote, are extended to nondelegates as follows:

(a) the chair of a section, or committee or commission, who may make a motion and who may speak relating to a resolution of that section, or committee or commission or any other matter within the jurisdiction of that section, or committee or commission;

(b) if a minority report is filed in connection with a resolution, a representative selected by the minority, who may speak on the resolution to present the view set forth in the minority report;

(c) any member of the Association, who may speak relating to a resolution filed by an Association member who is not a delegate;

(d) if the Chair approves, the administrative officer appointed by the Board of Governors may speak; and

(e) any person for whom the privilege is requested by a member of the House that is approved by two-thirds of the delegates voting may speak.

The Committee on Rules and Calendar shall make a recommendation on each such request.
This housekeeping amendment proposes to amend to §44.1(a) to clarify that commissions, along with sections and committees, also have privileges of the floor and have standing to bring resolutions with reports to the House of Delegates, since they are appointed by the ABA President.

Respectfully submitted,

Carlos A. Rodriguez-Vidal, Chair, Standing Committee on Constitution and Bylaws
Hon. John Preston Bailey
Sidney Butcher
M. Joe Crosthwait, Jr.
Janet Green-Marbley
Eileen M. Letts
Ethan Tidmore
Mary L. Smith, Board Liaison
Mary T. Torres, Board Liaison

August 2017
RESOLVED, That the American Bar Association approves the following programs: City College of San Francisco, Paralegal Studies Program, San Francisco, CA; Atlanta Technical College, Paralegal Studies Program, Atlanta, GA; Lewis University, Paralegal Studies Program, Romeoville, IL, and Tulsa Community College, Legal Assisting/Paralegal Program, Tulsa, OK.

FURTHER RESOLVED, That the American Bar Association reapproves the following paralegal education programs: Cuyamaca College, Paralegal Studies Program, El Cajon, CA; San Francisco State University, College of Extended Learning Paralegal Program, San Francisco, CA; West Valley College, Paralegal Program, Saratoga, CA; Norwalk Community College, Legal Assistant Program, Norwalk, CT; Florida SouthWestern State College, Paralegal Studies Program, Fort Myers, FL; Florida State College at Jacksonville, Paralegal Studies Program, Jacksonville, FL; Morehead State University, Paralegal Studies Program, Morehead, KY; Oakland Community College, Paralegal Program, Farmington Hills, MI; Oakland University, Paralegal Program, Rochester, MI; Mississippi University for Women, Legal Studies Program, Columbus, MS; Mount St. Joseph University, Paralegal Studies Program, Cincinnati OH; University of Cincinnati – Clermont College, Paralegal Studies Program, Batavia, OH; Pellissippi State Community College, Paralegal Studies Program, Knoxville, TN; South College, Legal/Paralegal Studies and Paralegal Certificate Programs, Knoxville, TN; Texas State University, Legal Studies Program, San Marcos, TX; and Laramie County Community College, Paralegal Program, Cheyenne, WY.

FURTHER RESOLVED, That the American Bar Association withdraws the approval of the following paralegal education programs: Georgetown University, Paralegal Studies Program, Washington, DC; and Northern Essex Community College, Paralegal Studies Program, Lawrence, MA, at the requests of the institutions.

FURTHER RESOLVED, That the American Bar Association extends the terms of approval until the February 2018 Midyear Meeting of the House of Delegates for the following programs: University of Alaska Anchorage, Paralegal Certificate Program, Anchorage, AK; South University, Legal/Paralegal Studies Programs, Montgomery, AL; Pima Community College, Paralegal Program, Tucson, AZ; College of the Canyons, Paralegal Studies Program, Santa Clarita, CA; John F. Kennedy University, Legal Studies Program, Pleasant Hill, CA; Miramar College, Legal Assistant Program, San Diego, CA; MTI College, Paralegal Studies Program, Sacramento, CA; Arapahoe Community College, Paralegal Program, Littleton, CO; University of New Haven Legal Studies Program, West Haven, CT; Wilmington University, Legal Studies...
Program, New Castle, DE; South University, Legal/Paralegal Studies Programs, Royal Palm

Beach, FL; Athens Technical College, Paralegal Studies Program, Athens, GA; Herzing

University, Paralegal Studies Program, Atlanta, GA; South University, Legal/Paralegal Studies

Programs, Savannah, GA; College of DuPage, Paralegal Studies Program, Glen Ellyn, IL;

Illinois State University, Legal Studies Program, Normal, IL; Loyola University Chicago,

Institute for Paralegal Studies, Chicago, IL; Southern Illinois University Carbondale, Paralegal

Studies Program, Carbondale, IL; Bowling Green Community College of Western Kentucky

University, Paralegal Studies Program, Bowling Green, KY; Sullivan University, Institute for

Paralegal Studies, Lexington, KY; Herzing University, Legal Assisting/Paralegal Studies

Program, Kenner, LA; 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; Montclair State University, Paralegal Studies

Program, Montclair, NJ; Finger Lakes Community College, Paralegal Program, Canandaigua,

NY; Fayetteville Technical Community College, Paralegal Technology Program, Fayetteville,

NC; Columbus State Community College, Paralegal Studies Program, Columbus, OH; Edison

Community College, Paralegal Studies Program, Piqua, OH; Rose State College, Paralegal

Studies Program, Midwest City, OK; 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, Legal Studies/Paralegal Studies

Programs, Columbia, SC; Brightwood College, fka Kaplan Career College, Paralegal Studies

Program, Nashville, TN; Salt Lake Community College, Paralegal Studies Program, Salt Lake

City, UT; Edmonds Community College, Paralegal Program, Lynnwood, WA; and Western

Technical College, Paralegal Program, LaCrosse, WI.
EXECUTIVE SUMMARY

1. **Summary of the Resolution**

   The Standing Committee on Paralegals resolve(s) that the House of Delegates grant(s) approval to **four** programs, grants reapproval to **sixteen** programs, withdraws the approval of **two** programs, and extends the term of approval of **thirty-nine** programs.

2. **Summary of the issue which the Resolution Addresses**

   The programs recommended for approval and reapproval in the enclosed report meet the Guidelines for the Approval of Paralegal Education Programs. The programs recommended for withdrawal of approval in the enclosed report have requested that approval be withdrawn.

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

   The programs recommended for approval, reapproval, and withdrawal of approval 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**

   No other positions on this resolution have been taken by other Association entities, affiliated organizations or other interested group.
RESOLUTION

RESOLVED, That the American Bar Association urges Congress to require that any works of the U.S. government that are published privately—that is, by parties other than the government—also be deposited with the Government Publishing Office and subsequently distributed on the Internet, to the member libraries of the Federal Depository Library System, to the Library of Congress, and to the National Archives.

FURTHER RESOLVED, That the American Bar Association urges the Office of Government Ethics to develop a legal advisory for employees and officers of the executive branch to determine when a privately published work is a work of the U.S. government.

FURTHER RESOLVED, That the American Bar Association encourages publishers to inquire of authors who are employed by the U.S. government if their work is a work of the U.S. government and, if so, to clearly label such work upon publication and make it freely and broadly available to the public.
EXECUTIVE SUMMARY

Works of the U.S. government are writings and other publications authored by an employee or officer of the federal government in the course of his or her official duties. These works of government are not eligible for copyright based on long-standing public policy and legislative enactments going back to the Printing Act of 1895 and the Copyright Act of 1909.

1. **Summary of the Resolution**

This report and resolution outlines a number of steps that governmental authorities and private publishers (including the ABA) could take to encourage broader availability of Works of the U.S. Government. This resolution recommends that Congress mandates a deposit of all externally published works of government with the Government Printing Office for subsequent distribution on government web sites and through the Federal Depository Library System. In addition, this resolution recommends that the Office of Government Ethics develop guidelines instructing federal employees and officers on the proper contours of the works of government clause.

This resolution also recommends that publishers more determine on submission which articles are works of government and more clearly mark them upon publication.

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

In the 20th century, a large number of scholarly and technical articles began to be published in journals run by professional associations or by private publishers. This report documents 552 articles in publications of the ABA which are potentially works of government and thus not eligible for copyright. This report also demonstrates that the problem is not confined to the legal literature, and includes several hundred thousand journal articles authored by federal employees or officers and privately published. The fields of endeavor include law, economics, medicine, engineering, agriculture, and many other disciplines.

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

The law requires that works of government be clearly identified. However, many such articles are not properly identified and in any case, many of them are not available except by subscribing to commercial services and adhering to stringent terms of use. By more clearly labelling Works of the U.S. Government and by requiring mandatory deposit of such works to the Government Printing Office, this literature will become more broadly available as is the intent of the Works of the U.S. Government clause of the Copyright Act. By urging formal guidance from the Office of Government Ethics, employees and officers of the government will be able to identify when a work is conducted in the course of their official duties.

4. **Summary of Minority Views**

None as of this writing.
RESOLVED, That the American Bar Association opposes the use of mandatory, binding, pre-dispute arbitration agreements in private student loan contracts; and

FURTHER RESOLVED, That the American Bar Association supports enactment of legislation and regulations that would prohibit or invalidate such arbitration agreements and opposes legislation and regulations that would authorize, encourage, or enforce such agreements.
EXECUTIVE SUMMARY

1. Summary of the Resolution

This resolution places the American Bar Association on record opposing the use of mandatory, binding, pre-dispute arbitration agreements in private student loan contracts. The resolution also places the American Bar Association on record supporting the enactment of legislation and regulations that would prohibit or invalidate such arbitration agreements and opposes legislation and regulations that would authorize, encourage, or enforce such agreements.

2. Summary of the Issue that the Resolution Addresses

Lenders in the private student loan market have come under increasing scrutiny for predatory practices that include (1) charging high interest rates and penalties in violation of state consumer protection laws, (2) providing high-cost loans to borrowers who are likely unable to repay their debts, and (3) misrepresenting the quality of educational institutions that they finance. Borrowers harmed by these practices have sought relief through civil actions, often by way of class action lawsuits, but have been forced to arbitrate their claims due to a pre-dispute arbitration provision in the original loan documents. These borrowers often unknowingly waive their right to a civil jury or non-jury trial. Moreover, because the cost of arbitration often exceeds the amount of an individual’s damages, they are unable to bring their claims and potentially illegal predatory practices cannot be challenged.

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

The resolution reaffirms the ABA’s longstanding support for the concept that the right to a trial by jury is a fundamental right and that any waiver of this right should be knowing and voluntary. It reaffirms the ABA’s support for access to the courts and for alternative dispute resolution, such as arbitration, when it is voluntary. The resolution specifically extends existing policy to cases involving private student loans.

4. Summary of Minority Views or Opposition Which Have Been Identified:

Minority views were presented within the Section to the effect that the resolution is not consistent with the ABA’s support for alternative dispute resolution. The majority view was that opposition to pre-dispute arbitration provisions in private student loans is not inconsistent with the ABA’s longstanding support for voluntary alternative dispute resolution.
RESOLVED, That the American Bar Association urges state, local, territorial, and tribal legislative bodies and governmental agencies to interpret existing laws and policies, and adopt laws and policies, to allow the implementation and administration of trap-neuter-vaccinate-return programs for community cats within their jurisdictions so as to promote their effective, efficient, and humane management.
EXECUTIVE SUMMARY

1. Summary of the Recommendation

This recommendation urges state, local, territorial and tribal legislative bodies and governmental agencies to interpret existing laws and/or adopt laws and policies that allow the implementation and administration of trap-neuter-vaccinate-return (TNVR) programs for free-roaming (“community”) cats within their jurisdictions. TNVR is a population management technique for reducing the population of free-roaming community cats by which such cats are humanely trapped, evaluated, sterilized by a licensed veterinarian, vaccinated against rabies, eartipped, and returned to their original location from which they were found. The legality of TNVR programs have been challenged in areas of the country due to the inconsistent legal treatment of community cats by state statutes and local ordinances and policies. Consistent legal treatment that allows TNVR promotes the effective, efficient, and humane management of community cats, promotes conservation efforts, and protects public health.

2. Summary of the Issue that the Recommendation Addresses

It is estimated that there are 30-40 million community cats living in the United States. Jurisdictions have struggled to manage the community cat population for many years using a traditional trap-and-remove technique that typically results in killing the cats. This technique has proven ineffective and costly. TNVR is a more effective, efficient, and humane method of control shown to reduce to the populations of community cats, reduce the intake of community cats to shelters, reduce the chances of transmission of disease in the communities through vaccination efforts, and reduce complaints to local police and animal control departments regarding nuisance and property destruction. Traditional criminal and civil statutes create unnecessary obstacles for the implementation and administration of TNVR programs.

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

If jurisdictions interpret existing laws and policies and/or adopt laws and policies to allow the implementation and administration of TNVR programs, local governments and private entities and individuals will be able to implement such programs without the possible threat of sanction and, in turn, provide a humane, effective, cost-saving alternative for shelters seeking to limit the intake of community cats into their facilities, protect public health, and reduce the number of free-roaming cats in the neighborhoods they serve.

4. Summary of Minority Views or Opposition Which Have Been Identified

Certain wildlife and bird conservation groups and a very small minority of animal welfare organizations have opposed the use of TNVR programs for the control of community cats. These stakeholders claim that free-roaming cats have an adverse impact on birds and other wildlife and pose a threat to public health. Moreover, free-roaming cats are subjected to threats such that their lives outdoors result in their pain and suffering. They argue that TNVR is ineffective and all free-roaming cats must be eradicated through trap and remove, e.g. kill,
programs. However, the studies upon which they rely generally are flawed. In fact, there is considerable empirical evidence showing that TNVR is more effective, efficient, and humane than trap-and-remove programs for the management of community cats.
RESOLVED, That the American Bar Association urges all federal, state, local, territorial, and tribal legislative, judicial and other governmental bodies to support the principles that:

(1) the holder of the attorney-client privilege does not waive the privilege or protection by sharing communications or materials with another person (not jointly represented by the same counsel) who,

(a) having common legal interests with the holder in some litigated, potentially litigated, or nonlitigated matter or in related matters (such as parallel lawsuits),

(b) has agreed with the holder of the privilege or protection

(i) to cooperate with one another to develop and pursue a joint legal strategy with respect to some aspect of the matter or matters in which the parties have common interests, and

(ii) to maintain the confidentiality of any privileged or protected communications or materials shared in pursuit of such cooperation;

provided that the communications or materials shared relate to the parties' common interests;

(2) no party to such a common-interest arrangement can unilaterally waive privilege or protection with respect to communications or materials other than the waiving party's own communications or materials;

(3) in the event of later adverse proceedings between or among the parties to the common-interest, any party may use communications or materials shared against any other party;

(4) existence of a common-interest or agreement to a common-interest arrangement is not a basis to compel the holder of a privilege or protection
to disclose to others having that common interest any communications or
materials that the holder does not voluntarily share;

(5) while some authorities condition protection of common-interest
sharing on each party to the common-interest arrangement being
separately represented, no such requirement should be applied when the
parties to the common-interest arrangement have a preexisting relationship
(including, without limitation, indemnitor-indemnitee, insurer-insured,
patent holder-licensee, or lead lender and participants in the loan) that

(a) binds them to a common outcome on the issue(s) as to which
they have a common interest,

(b) creates duties to respect one another’s interests, and

(c) creates rights to participate in decision making regarding the
common interest.

(Paragraph (5) has no application in criminal litigation.)
EXECUTIVE SUMMARY

1. Summary of the Resolution

ABA supports common-interest doctrine, under which sharing of privileged communications with persons of common interest who have agreed to maintain confidentiality does not waive privilege. Terms for application of doctrine and consequences of doing so are specified.

2. Summary of the Issue that the Resolution Addresses

Questions have arisen in various cases regarding whether, and in what circumstances, sharing of privileged communications with persons of common interest will be protected from the waiver that normally results from disclosure of such communications outside of the attorney-client relationship where they occurred, and what consequences flow from such sharing.

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

Paragraph (1) supports the common-interest doctrine generally and states the requirements supported by the great weight of authority. It disapproves the minority view that common-interest sharing is proper only in connection with pending or specifically anticipated litigation.

Paragraphs (2) and (3) specify consequences of common-interest sharing supported by the overwhelming weight of authority: no party to a common interest arrangement can unilaterally waive privilege as to another party’s communications and any party can use shared information against any other party in later adverse proceedings between them.

Paragraph (4) provides, in accordance with the overwhelming weight of authority, that existence of a common interest provides a basis for voluntary sharing privileged communications without waiver but does not provide a basis for compelling a party to share information if it prefers not to do so. Contrary authority in Illinois and scattered cases elsewhere is disapproved.

Paragraph (5) addresses an emerging issue on which there is disagreement and little authority: can an unrepresented party participate in a common-interest arrangement in which privileged communications are shared. Specifically, Paragraph (5) identifies a limited type of arrangement, among parties with preexisting relationships that bind them to a common result, in which it would be permissible for an unrepresented party to participate without such participation resulting in waiver of privilege as to communications shared.

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

No known opposition. Some contrary authority, as identified in Report.
RESOLUTION

RESOLVED that the American Bar Association encourages greater use and development of ombuds programs that comply with generally recognized standards of practice, as an effective means of preventing, managing, and resolving individual and systemic conflicts and disputes.
EXECUTIVE SUMMARY

1. Summary of the Resolution

This resolution encourages the greater use and development of ombuds programs, consistent with recognized standards of practice, as an effective means of preventing, managing, and resolving individual and systemic conflicts and disputes.

2. Summary of the Issue that the Resolution Addresses

The ever-increasing need for mechanisms to resolve individual and systemic conflicts is recognized by multiple entities, including the media, universities, government, leading non-profit agencies and Fortune 500 companies, and this proposal once again encourages the expanded use of ombudsman programs. During the most recent legislative cycle, a number of bills were introduced to establish or reform ombudsman positions in different federal agencies. The proliferation of Ombudsman programs since the 2004 resolution, both domestically and internationally, in conditions that did not always recognize or adhere to generally accepted ombuds standards, led the Ombuds Committee of the ABA Dispute Resolution Section to draft this resolution. The proposed resolution is consistent with Recommendation 2016-5 adopted by the Administrative Conference of the United States on December 14, 2016 which encourages greater use of ombuds programs and that both new and existing programs should adhere to generally accepted standards.

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

The proposed resolution language encourages greater use of ombuds programs in keeping with recognized standards of practice. The proposed resolution is not intended to favor any particular ombuds category or set of standards. Instead, it is intended to encourage members of the ABA, lawmakers, policy makers, and others to deepen their understanding of the different roles ombuds play, and how these ombuds functions relate to conflict management systems, government operations, and societal interests at large and to then implement a program that will best serve the identified needs.

4. Summary of Minority Views or Opposition Internal and/or External to the ABA

The Dispute Resolution Section is not aware of opposition from any other section or division or from other sources.
RESOLVED, That the American Bar Association reaffirms its opposition to restructuring the United States Court of Appeals for the Ninth Circuit because there is no compelling empirical evidence of adjudicative or administrative dysfunction in the existing structure; and

FURTHER RESOLVED, That the American Bar Association supports ongoing efforts by the United States Court of Appeals for the Ninth Circuit and other federal courts to utilize technological and procedural innovations in order to continue to enable them to handle caseloads efficiently while maintaining coherent, consistent law in their respective jurisdictions.
EXECUTIVE SUMMARY

1. Summary of the Resolution

This Resolution opposes restructuring the United States Court of Appeals for the Ninth Circuit because there is no compelling empirical evidence of adjudicative or administrative dysfunction in the existing structure. It further supports ongoing efforts by the Ninth Circuit and other federal courts to utilize technological and procedural innovations in order to continue to enable them to handle caseloads efficiently while maintaining coherent, consistent law in their respective jurisdictions.

2. Summary of the Issue that the Resolution Addresses

There is no compelling empirical evidence of either adjudicative or administrative dysfunction in the existing structure of the United States Court of Appeals for the Ninth Circuit that would warrant a split. Nevertheless, members of Congress continue to propose splitting the Ninth Circuit without justification.

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

This Resolution clarifies the ABA’s position and enhances the ABA’s ability to oppose restructuring of the United States Court of Appeals for the Ninth Circuit absent compelling evidence justifying restructuring.

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

None known at the time this Summary was prepared.
RESOLVED, That the American Bar Association urges the President to sign and the Senate to approve ratification of the Inter-American Convention on Protecting the Human Rights of Older Persons, approved by the General Assembly of the Organization of American States on June 15, 2015.
EXECUTIVE SUMMARY

1. Summary of the Resolution

This resolution calls on the President of the United States to sign the Inter-American Convention on Protecting the Human Rights of Older Persons and urges the Senate to approve ratification of the convention. The convention was approved by the General Assembly of the Organization of American States (OAS) on June 15, 2015.

The purpose of the Convention is to promote, protect, and ensure the recognition and the full enjoyment and exercise, on an equal basis, of all human rights and fundamental freedoms of older persons in the Americas in order to contribute to their full inclusion, integration and participation in society.

2. Summary of the Issue that the Resolution Addresses

Older persons in large and growing numbers suffer unique human rights shortcomings around the world. They too often struggle on the margins of society because of discriminatory views on aging. We may not see this as frequently in the United States, but we do see it. Conditions vary widely worldwide and abuses are too common. Older men and women are often denied access to services, jobs, pensions and other financial supports, and adequate health and long-term care, including person-centered end-of-life care. Older individuals are unduly vulnerable to abuse, neglect, and poverty. While there are a good number of existing human rights instruments and mechanisms that, in theory, offer potential to protect the rights of older persons, this potential is seriously diluted by the lack of specificity, depth, comprehensiveness, and consistency.

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

For the first time, this treaty provides a comprehensive statement on how existing broadly defined human rights apply to older persons, especially in connection with respect to circumstances unique to or disproportionately affecting older persons. For example, the convention addresses essential matters not expressly addressed in other treaties, such as discrimination based on age; multiple discrimination; palliative care; long-term care services and supports; a right to life and dignity in old age; a right to independence and autonomy; a right to participation and community integration; and a right to safety and a life free of violence of any kind.

4. Summary of Minority Views

None as of this writing.
RESOLVED, That the American Bar Association urges Congress to enact legislation enabling the United States Department of Justice to initiate and pursue civil actions to obtain equitable relief for systemic violations of the constitutional right to the effective assistance of counsel, both directly and through private litigants deputized to file such actions in the name of the United States;

FURTHER RESOLVED, That the American Bar Association urges Congress to enact legislation recognizing the right of private litigants, in their individual capacity or as members of a class action, to obtain equitable relief in federal court for systemic violations of the constitutional right to the effective assistance of counsel.
EXECUTIVE SUMMARY

1. Summary of the Resolution

This resolution urges Congress to enable the United States Department of Justice to ensure compliance with the Sixth Amendment right to effective assistance of counsel. Specifically, it urges Congress to (1) enable the DOJ, or its deputies to pursue civil action to obtain equitable relief where violations of that right occur; and (2) recognize a cause of action for equitable relief, cognizable in federal court, by persons charged with crimes, either individually or as representatives of a class, for systemic violations of the right to counsel.

2. Summary of the Issue that the Resolution Addresses

Public defense has, for several decades, been in a state of crisis. Throughout the nation, public defense providers are inadequately funded and carry grossly excessive workloads. These attorneys, saddled with hundreds or thousands of cases per year, are frequently unable to meet their Sixth Amendment duties to effective assistance of counsel. The United States Department of Justice has authority to pursue civil actions to obtain equitable relief where violations of this right occur in the juvenile context, but that authority does not presently exist in the adult context. Given the Department’s limited time and resources, deputization, as well as a private enforcement through individual and class action lawsuits are also necessary to ensure that such violations do not occur.

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

The United States Department of Justice is better positioned than any other organization or entity in our nation to enforce the right to effective assistance of counsel. Where the federal government cannot or will not intervene, an alternative mechanism is necessary to ensure that private litigants and the public interest legal organizations that pursue impact litigation on their behalf can also seek redress for systemic Sixth Amendment violations. By enacting the legislation recommended in this resolution, Congress will greatly deter widespread violation of the Sixth Amendment.

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

The Judicial Division expressed concerns with a previous version of this Resolution submitted for consideration at the 2017 Midyear Meeting. The Resolution was withdrawn for revision. In the current Resolution, SCLAID was able to address a number of the concerns raised by the Judicial Division, however, the Judicial Division continues to have concerns regarding extending the private right of action.
RESOLVED, That the American Bar Association adopts the *ABA Guidelines for Best Practices for Individual Retirement Accounts*, dated August 2017;

FURTHER RESOLVED, That the American Bar Association urges all financial institutions that act as custodians of Individual Retirement Accounts to adopt and apply the Guidelines to all such accounts;

FURTHER RESOLVED, That the American Bar Association urges the Financial Industry Regulatory Authority to require its Members to adopt and apply the Guidelines for all Individual Retirement Accounts.
ABA Guidelines for Best Practices for Individual Retirement Accounts

(Dated: August, 2017)

1. Appointment of Trusted Contact Persons:

A broker-dealer who is a member (“Member”) of the Financial Industry Regulatory Authority (“FinRA”) should permit each owner (“Investor”) of an account described in sections 408(a), 408(k) or 408A of the Internal Revenue Code (“IRA account”) to name at least three trusted contact persons pursuant to FinRA’s Rule 4512(a)(1)(F).

2. Red Flag Alerts to Trusted Contact Persons

(a) Each Member should as promptly as possible alert each and every trusted contact person of each and every Notice Event listed in Appendix A.

   (i) A copy of any notice sent to one or more trusted contact persons should also be sent to the Investor unless the Member has a reasonable belief that an unauthorized person is intercepting and/or reading messages sent to the Investor, in which case the alert sent to the trusted contact persons should include a notice that a copy was not sent to the Investor and the reason why it was not sent.

   (b) Every reasonable effort should be made to deliver those alerts to one or more trusted contact persons before any funds or securities in the account are transferred or distributed, or any other modifications, such as changes of beneficial interests, contact information or links to a new bank account, are made or become effective.

   (c) Generally, an electronic notice such as e-mail should be utilized, unless the trusted contact person in question has indicated a different preference.

   (d) Exception: if the Member has a reasonable belief or substantial suspicion that a trusted contact person is or has been financially exploiting the Investor, or is likely to do so, that trusted contact person should not be alerted, but, in that event, the other trusted contact persons, if any, should be notified that such trusted contact person was not so alerted and the reason why. If there is no other trusted contact person who can be notified, the Member should promptly notify appropriate government and social agencies, such as an adult protection service or a law enforcement agency.

   (e) Special rule for passwords and security questions and answers: A notice to a trusted contact person that there has been a change in the password, or in the security questions and answers used by the Member to verify the identity of a person attempting to access or make changes to the account online, should only alert the trusted contact person to the fact that the password or other information was changed, but should not include the new password or other information used for verification purposes.
APPENDIX A
Notice Events

The following is a list of Notice Events as of August, 2017: The list is not intended to be exclusive or inflexible, and FinRA Members may add others or make appropriate modifications from time to time in order to reflect changes in technology and the techniques used by financial predators.

1. Subject to the special rule in Guideline 2(e), any change in the password or other sign-in information, including changes in security questions or the answers to such questions.

2. Any change in the identity of, or in the contact information for, the Investor, a trusted contact person, or any other person to whom copies of statements or other information about the account are transmitted, and any other person who has on-line access to account information, including the holder of a power of attorney or a person with trading authorization for the account. This includes changes of names, postal and e-mail addresses, telephone numbers and tax and account identification numbers and any permanent or temporary suspension of any of the foregoing.

3. Any change in beneficial interests, including changes in percentages or the identities of the beneficiaries, or in the contingencies associated with such interests.

4. Any change in the identity or contact information of the person or bank, brokerage or other account to which distributions or transfer of funds or securities may be made. This includes adding or subtracting an account to which distributions or transfers may be made or any modification in the kinds or amounts of funds or securities that may be transferred to or from such account or in the limitations on or authorizations for such transfers.

5. Any request or direction for a distribution or payment which, because of the amount or timing or pattern of distribution or payment, is highly unusual and which the Member has a significant concern that it might be indicative of financial exploitation or other abuse of the Investor. This includes attempts to transfer money to engage in commonly known fraudulent schemes.

6. Any request or direction to engage in trading activities which the Member has a concern is significantly inconsistent with the Investor’s account profile or is otherwise significantly inconsistent with a sound retirement investment program, such as using almost the entire balance in the account to purchase highly speculative options or positions, or investing large amounts in assets that are illiquid or otherwise not readily tradeable, or engaging in excessive churning of an account.

7. A request for authorization to make withdrawals or payments with checks drawn on the account or, where such authorization already exists, to a substantial increase in the amount that may be withdrawn or paid by such checks, either individually or
cumulatively. If the account permits the use of credit, debit or ATM cards, an initial request for the issuance of such cards, or any request for a substantial increase in the amounts authorized. Depending on the circumstances, an unusual, sudden and unexplained increase in the frequency in the use of such checks or cards, or in the amounts charged or withdrawn, may also be determined to be a Notice Event. In case of doubt, a sudden increase in frequency or in the amounts attempted to be charged, paid or withdrawn should be treated as a Notice Event.

8. Any event that requires the filing of a Suspicious Activity Report with the Financial Crimes Enforcement Network, a report to an adult protective service, or a report to any other governmental agency.
1. Purpose and Applicability of Guidelines

These Guidelines recommend certain practices and procedures for broker-dealers who are members (“Members”) of the Financial Industry Regulatory Authority (“FinRA”) and other financial institutions to apply in connection with IRA accounts. They are intended to provide an improved, but extremely important, mechanism for protecting the owners of IRA accounts from financial exploitation by third parties. The Guidelines were drafted primarily with the elderly in mind, since they are more likely to be victimized by financial predators, but these protective practices and procedures should apply to all investors in IRA accounts, regardless of age. In addition, a financial institution may determine to apply these Guidelines, with appropriate modifications, to other forms of investment accounts and to other individuals.

The procedures recommended by the Guidelines will also help to avoid financial losses that occur even in the absence of third party predators. An example is excessive churning of an account by an investor with dementia.

The Guidelines are designed to be in addition to, and not in lieu of, each of the following:

(a) The requirements in FinRA’s recent amendment to its rule 4512 and its recent adoption of new rule 2165, both of which will become effective on February 5, 2018 (“Rules”). Those Rules deal primarily with Investors over the age of 65, but the Guidelines can and should be applied to all Investors’ IRA accounts, regardless of age. The Rules also permit, but do not require, its Members (broker-dealers) to utilize the procedures specified as “best practices” by the Guidelines.


(c) Any requirements to file reports with various government and social agencies (e.g., a Suspicious Activity Report that is required to be filed with the Financial Crimes Enforcement Network (“FinCEN”) or a report to an adult protective service).

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1 [Www.finra.org/industry/notices/17-11](http://Www.finra.org/industry/notices/17-11)
2 [Serveourseniors.org/about/policy-makers/nasaa-model-act/](http://Serveourseniors.org/about/policy-makers/nasaa-model-act/)
3 [Serveourseniors.org/about/industry/practices-procedures-guide/](http://Serveourseniors.org/about/industry/practices-procedures-guide/)
2. TRUSTED CONTACT PERSONS

FinRA’s Rules, as amended effective February 5, 2018, provide that an Investor over the age of 65 (and in some cases, under age 65) may name an individual to be a trusted contact person, who may be provided with confidential information about an Investor’s account under certain circumstances. When initially proposed, FinRA invited comments from the public. Several commentators recommended that Investors be allowed to designate more than one trusted contact person. While FinRA declined to require multiple designations, it stated that financial institutions were free to allow additional designations. In part, the Guidelines are in response to FinRA’s statement that multiple designations of trusted contact persons are permissible; the Guidelines take the position that the best practice is to allow Investors to appoint at least three trusted contact persons for their IRA accounts. The Guidelines provide that persons under the age of 65 should also be allowed to name trusted contact persons.

3. NOTICE EVENTS (Red Flags)

To make the Guideline practices effective, the broker-dealer needs to notify the trusted contact persons of suspicious activities or conditions. FinRA’s comments acknowledged that this could be useful and, while it did not mandate such notices, neither did it prohibit them. The Guidelines specify that the best practice is to provide such notices.

Most of the red flags in this list are mentioned at various places in FinRA’s own reports on the subject. The most significant exception, one that does not appear to be mentioned by FinRA and which is included in this list, is a change of beneficial interest, which can result in the diversion of the Investor’s entire account at death to the financial predator or the predator’s own family. In effect, this is a theft of the entire account at death.

The list of Notice Events must necessarily remain fluid, as new techniques for taking financial advantage of Investors appear. The list in Appendix A is not intended to be exclusive, and each Member may, on its own, add additional items to the list for its own use. Although this particular list covers red flags that are likely to be most relevant to IRA accounts at the present time, other organizations have comparable lists of red flags both for this and for other contexts. Members should take into account when appropriate those other listings of red flags.5 In addition, from time to time, it may be appropriate to modify the ones on the current list to reflect changes in technology and the techniques used by financial predators. It is contemplated that recommendations of sources like FinRA, NASAA and various government agencies would be taken into account in modifying this list.

Although the list of Notice Events might appear to be quite lengthy, it is intended that, under normal circumstances, not more than a small number of alerts would be necessary in any

5 See, e.g., FinCEN’s list at www.fincen.gov/resources/advisories/fincen-advisory-fin-2011-a003
calendar year. Overwhelming trusted contact persons with an avalanche of alerts would be counter-productive. For example, it is unlikely that an Investor would change beneficial interests more than once every few years, or change bank linkages more than once a year. Although it is often recommended that passwords be changed frequently, few Investors, especially the elderly, actually do this, or do it more than once a year. On the other hand, a large number of alerts over a short period of time is probably indicative of fraudulent or other inappropriate activity and justifies investigation by the trusted contact persons.

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6 Frequent changes of beneficiaries by an elderly person, especially if he or she appears to have dementia, is often a sign that someone is exercising undue influence.

7 Item number (7) in Appendix A refers to checks that can be drawn against an IRA account, and credit, debit and ATM cards. The authorization to withdraw funds using checks or credit, debit or ATM cards from an IRA account may facilitate theft of the funds in an account. Nothing in this list should be interpreted to imply approval of the use of such checks or cards for the elderly.
EXECUTIVE SUMMARY

1. Summary of the Resolution

Part 1 of the Resolution recommends the adoption of the “ABA Guidelines for Best Practices for Individual Retirement Accounts” to be applied and used by financial institutions for IRA accounts. The practices set forth in the Guidelines would permit IRA account owners to create a monitors’ committee that could oversee activities in the accounts that might indicate possible victimization of the Investor.

Part 2 of the Resolution recommends that the ABA urge all broker-dealers who are members of FinRA adopt and apply the practices recommended by the Guidelines.

Part 3 of the Resolution recommends that the ABA urge FinRA to make the practices listed in the Guidelines mandatory for broker-dealers.

2. Summary of the issue which the Resolution addresses:

IRA accounts tend to peak in value around age 85, an age at which a majority of account owners will be afflicted by various forms of dementia such as Alzheimer’s Disease and Parkinson’s Disease, and by other physical and mental disabilities that render them highly vulnerable to being victimized.

Because of state laws and U.S. Treasury Regulations, none of the methods that can be utilized to protect other forms of assets from financial predators, such as the creation of trusts or inter-vivos gifts to children or other beneficiaries, are permitted for IRA accounts.

At the present time, most, if not all, financial institutions do not permit Investors to arrange to have warnings conveyed to individuals trusted and designated in advance by those Investors of events or transactions that may signify possible fraudulent activities. The practices throughout the industry are inconsistent and, for the most part, insufficient to protect the Investor adequately.

3. An explanation of how the proposed policy position will address the issue.

The proposed ABA Guidelines provide a mechanism for establishing a committee of monitors, similar to the protector’s committees often used in the area of trust and estate planning to prevent inappropriate actions by trustees. This is accomplished by increasing to a minimum of three the number of trusted contact persons (as defined in FinRA’s proposed rules to become effective on February 5, 2018), and to send to those trusted contact persons alerts of red flags indicating possible financial abuses and irregularities.
The Guidelines would permit the trusted contact persons to monitor the activity in an IRA account. This would enable them to investigate suspicious activities and, if they deem appropriate, take corrective actions before significant losses occur. Those actions might involve contacting law enforcement or adult protection agencies, arranging for medical or psychological evaluations, eliminating a suspected financial predator’s access to the Investor or, if necessary, commencing guardianship or conservatorship proceedings.

4. **A summary of any minority views or opposition which have been identified.**

No opposition within the ABA has been identified.

When FinRA adopted the new Rules, it suggested that Members could adopt most or all of the practices specified in the Guidelines on a voluntary basis, but declined to make them mandatory.
RESOLUTION

RESOLVED, That the American Bar Association supports the principle that bar admission should not be denied based solely on immigration status.

FURTHER RESOLVED, That the American Bar Association urges Congress to amend 8 U.S.C. § 1621(d) to insert, at the conclusion of all existing language, the following sentence:

“A state court vested with exclusive authority to regulate admission to the bar may, by rule, order, or other affirmative act, permit an undocumented alien to obtain a professional license to practice law in that jurisdiction.”
EXECUTIVE SUMMARY

1. Summary of the Resolution

American Bar Association supports the principle that bar admission should not be denied based solely on immigration status.

2. Summary of the Issue that the Resolution Addresses

Like many undocumented law students in the United States, the Chair-Elect of ABA Law Student Division, Thomas E. Kim, whose parents brought him to the United States on a tourist visa and then never returned to South Korea, will face uncertainty on whether he can practice law in the state of Oregon after he earns his law degree from Arizona State University in 2018.

Undocumented immigrants have the desire, and increasingly the education to gain admittance to practice law before this nation’s various state bars; they simply need the state-by-state authorization to do so. That is what this Resolution seeks.

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

The recommended Resolution will enable the American Bar Association to facilitate and urge the appropriate governing bodies of American states and territories to enact rules permitting undocumented immigrants, who have met all the necessary prerequisite qualifications for admission in their respective jurisdiction, to join State Bars.

There is undeniably an overwhelming need – both currently and on behalf of a growing number of qualified, but undocumented immigrants – for the American Bar Association to weigh-in on the issue of bar admissions. This resolution acknowledges that unmet need, and proposes a long-term and consistent solution moving forward.

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 adopts the American Bar Association Model Provisions on Electronic Commerce for International Trade Agreements, dated August 2017, and recommends them as a standard template for use in 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;

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

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:
   (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.

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\(^3\) 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.
Article 1.6: Electronic Authentication and Electronic Signatures

1. Except in circumstances otherwise provided for under its law, a Party 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 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 [Article x (Consumer Protection)] 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.4

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4 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.
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;

(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.

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5 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.
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.

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 to suppliers of unsolicited commercial electronic messages that do not comply with the measures adopted or maintained pursuant 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 SMEs 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

The Resolution calls for the American Bar Association to urge the United States to adopt the American Bar Association Model Provisions on Electronic Commerce for International Trade Agreements, dated August 2017, and recommends them as a standard template for use in international trade agreements and other relevant international agreements and guidelines.

2. Summary of the Issue that the Resolution Addresses

The ability of companies and consumers to move data has become paramount in promoting, fostering, and expanding commerce and services around the globe. Many countries have enacted rules that stifle competition and disadvantage American entrepreneurs, by imposing burdensome barriers or overly restricting the free flow of information. This resolution supports modernization and uniformity of the regulation of business data flows from one country to another country. It also urges the United States to adopt the American Bar Association Model Provisions on Electronic Commerce for International Trade Agreement (“the Model Provisions”) as the standard template for use in international trade agreements and other relevant international agreements and guidelines, subject to reasonable safeguards such as the protection of consumer data upon its exportation.

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

The Resolution enables the ABA to urge the United States 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, taking into account new technologies and associated costs, as well as the need for appropriate protection of data.

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

At the time of the writing of this R&R and summary, we are not aware of any formal reported direct opposition to the approval of this Resolution.
RESOLUTION

RESOLVED, That the American Bar Association urges national governments worldwide to adopt laws to phase out the manufacture, import, and sale of lead paint;

FURTHER RESOLVED, That the American Bar Association supports efforts of the international community, governments, industry, and non-governmental organizations to promote the phase-out of lead paint by no later than 2020; and

FURTHER RESOLVED, That the American Bar Association urges lawyers, law firms, bar associations, and other professional and nonprofit organizations to support adoption and implementation of laws to phase out and eliminate lead paint through pro bono support, educational initiatives, and other appropriate means.
EXECUTIVE SUMMARY

1. Summary of the Resolution

The resolution urges national governments to adopt measures to control the risks of lead paint by phasing out its manufacture, import, and sale, and voices support for efforts to achieve worldwide adoption of such measures by 2020. The language of the resolution is formulated to track the aims of the “Lead Paint Alliance,” a voluntary initiative led by the World Health Organization and the United Nations Environmental Programme, which includes representatives from the paint and coatings industry, NGOs, and the U.S. government. The resolution also aims to mobilize ABA members, ABA components, and other affiliates to support adoption of lead paint laws through awareness-raising and educational activities and pro-bono technical support.

2. Summary of the Issue that the Resolution Addresses

Lead exposure causes severe harm to human health and development, particularly to children. Although exposure to lead in paint remains a leading source of exposure globally, only one third of countries in the world have adopted laws to address lead in paint. Primarily low- and middle-income countries lack such laws. The consequences of lead exposure are tremendous – in some regions the neurodevelopmental impacts alone amount to two to four percent of GDP. Adopting legislation or regulation to phase out lead paint in a form that is clear, readily implemented and enforceable would mark a substantial step toward eliminating the harms of lead exposure, particularly to children.

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

This resolution enables the ABA to urge national governments to adopt laws to phase out lead paint, and helps to focus the resources of ABA components to support governments’ and other stakeholders’ efforts to achieve global adoption of such measures by 2020.

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

The Rules and Calendar Committee met May 20-21, 2017 and recommended certain changes to the resolution. These changes were adopted as proposed, with one exception. The Committee recommended deleting the term “national” in the first clause of the resolution. (“That the American Bar Association urges national governments worldwide to adopt laws to phase out the manufacture, import, and sale of lead paint;”) We decline to adopt this recommendation in order to clarify that the ABA is urging only “national,” rather than sub-national governments such as states, provinces, municipalities, etc., to adopt measures to address lead paint. National governments are the governmental body best-placed to regulate lead paint hazards through restrictions on manufacture, import, and sale. Restrictions on trade by sub-nationals is sub-optimal for a number of reasons, including lack of expertise and implementation/enforcement authority among sub-national authorities and increased economic costs due to patchwork regulation.
RESOLVED: That the American Bar Association amends the black letter of Rule 7 of the Model Rules for Lawyer Disciplinary Enforcement as follows (insertions underlined, deletions struck through):

RULE 7. ROSTER OF LAWYERS

Disciplinary counsel shall maintain or have ready access to current information relating to all lawyers subject to the jurisdiction of the board including:

(a) full name and all names under which the lawyer has been admitted or practiced;
(b) date of birth;
(c) current law office business address, and telephone number, and email address;
(d) current residence address;
(e) date of admission in the state;
(f) date of any transfer to or from inactive status;
(g) all specialties in which certified;
(h) other jurisdictions in which the lawyer is admitted and date of admission;
(i) location the name of the financial institution and account numbers for each account in which clients’ funds are held by the lawyer holds the funds of clients or third persons in connection with a representation;
(j) the name and business address of the lawyer(s) and any other individual(s) with authority to disburse funds from each account in which the lawyer holds the funds of clients or third persons in connection with a representation;
(k) the name and business address of the lawyer(s) responsible for complying with the applicable rules governing trust accounts, and of any other individual(s) to whom the lawyer delegates tasks related to the operation of such accounts;
(l) nature, date, and place of any discipline imposed and any reinstatements in any other jurisdiction; and
(m) date of death; and

(m) the universal lawyer identification number [together with the jurisdiction's prefix or suffix number, if any, issued by the court].
EXECUTIVE SUMMARY

1. Summary of the Resolution

The Resolution, jointly proposed by the ABA Standing Committee on Client Protection and the ABA Standing Committee on Professional Discipline, seeks to amend the black letter of Rule 7 (Roster of Lawyers) of the ABA Model Rules for Lawyer Disciplinary Enforcement (MRLDE). The proposed amendments would update and minimally expand the type of information that lawyers provide and disciplinary agencies can access as part of the annual licensing registration process to include the lawyer’s business email address, the name of the financial institution and the account number for each account in which the lawyer holds client or third person funds in connection with a representation, the name and business address of the lawyer(s) or other individual(s) with authority to disburse funds from trust accounts, and the name and business address of the lawyer responsible for complying with the applicable rules governing client trust accounts and any individual to whom the lawyer delegates tasks relating to the operation of such accounts, such as bookkeeping duties.

2. Summary of the Issue that the Resolution Addresses

The proposed amendments are part of the ongoing effort to minimize instances of lawyer misappropriation of monies held in trust accounts and hold lawyers accountable via discipline when appropriate.

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

The proposed amendments allow disciplinary counsel to readily access critical information when investigating allegations of dishonest conduct resulting in misappropriation of client or third person funds. This is especially relevant when the lawyer who is alleged to have committed the misconduct is not necessarily the lawyer whose name appears on the trust account or where nonlawyer employees are authorized signatories on trust accounts. The proposed amendments also allow disciplinary counsel to readily access trust account information when necessary for a more effective accounting and distribution of client funds if the lawyer dies, is missing, or becomes incapacitated. These changes will also help lawyers comply with the “complete records” requirement in Rule 1.15 of the ABA Model Rules for Professional Conduct. The proposed amendments would not create an undue burden for lawyers and are protective of clients and the public.

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

The submitting entities were not aware of any opposition at the time of filing.
RESOLUTION

RESOLVED, That the American Bar Association accredits the Privacy Law program of the International Association of Privacy Professionals of Portsmouth, New Hampshire for a five-year term as a designated specialty 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 periodically review programs that the House of Delegates has accredited and recommend their further reaccreditation or revocation of accreditation.

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

The recommendation addresses the issue by implementing previous House resolutions calling on the ABA to evaluate specialty certification organizations that apply for accreditation.

4. Summary of Minority Views

The Council of the Section of Science and Technology Law has created a working group to examine the existing privacy certification credentials offered by the IAPP, the contemplated program IAPP is seeking to have accredited, and to report to the Council regarding the suitability of “Privacy Law” as a distinct practice area suitable for certification of practitioners as experts. Communication among that working group of the Section Council, members of the Specialization Committee, and officers of the IAPP has been ongoing since the filing of this Resolution for House consideration, and all interested persons are working to resolve the Section Council’s questions and concerns.
RESOLVED, That the American Bar Association adopts the *ABA Criminal Justice Standards Relating to Dual Jurisdiction Youth*, dated August 2017.
PART I. DEFINITIONS AND GENERAL PRINCIPLES

STANDARD 1.1 DEFINITIONS

For the purpose of these Standards, the listed terms are defined as follows:

(a) "Behavioral Health Services" are a continuum of services for individuals at risk of, or suffering from mental health or substance abuse conditions.

(b) "Best Interest Advocate" is an individual, not functioning or intending to function as a lawyer, appointed by the court to assist the court in determining the best interests of the youth.

(c) "Child Welfare System" is the legal structure including courts, residential facilities, foster care placements, and services designed to promote the well-being of youth alleged or found to be status offenders or to be abused, neglected, abandoned, homeless, or exploited, by ensuring safety, achieving permanency, improving well-being, and building the family’s capacity to care for their youth successfully.

(d) "Collateral Consequences" are consequences flowing from arrest or adjudication, other than the direct dispositional order, that may impact opportunities for future education, financial aid, employment, housing, immigration status, public benefits, or other individual rights, services, or benefits.

(e) "Congregate Care Facility" is a housing facility in which each individual has a private or semi-private bedroom but shares with other residents a common dining room, recreational room, or other facilities.

(f) "Critical Youth Services" are services required for the well-being of youth, including supervision, housing, clothing, nutrition, education, recreation, and physical and behavioral healthcare.

(g) "Cultural Competence" is an ability to understand, communicate with, and effectively interact with people across different cultures and socio-economic backgrounds.

(h) "Data" is information that is captured for aggregate reporting purposes but does not identify individuals.

(i) "Delinquency" is any behavior that would be a crime if committed by an adult.

(j) "Defense Counsel" is a lawyer hired or appointed to represent a youth’s expressed interest in a delinquency proceeding.
(k) “Dependency Case” is a legal proceeding involving youth and parents in the child welfare system.

(l) “Dependency Counsel” is a lawyer hired or appointed to represent a youth’s expressed legal interests in a dependency case.

(m) “Diversion” is the referral of an accused youth, without adjudication of criminal or delinquency charges, to a youth service agency or other program, accompanied by a formal termination of all legal proceedings against the youth in the juvenile justice system upon successful completion of the program requirements.

(n) “Dual-Status Youth” are youth under the concurrent jurisdiction of the child welfare system and the juvenile justice system.

(o) “Dual-Status Docket” is a specialized docket within the Family Court that exercises jurisdiction over youth who are concurrently involved in the juvenile justice and child welfare systems.

(p) “Family Court” is a court with jurisdiction over one or more of the following cases involving: delinquency; abuse and neglect; status offenses; the need for emergency medical treatment or behavioral health crisis intervention; voluntary and involuntary termination of parental rights proceedings; adoption proceedings; appointments of legal guardians for juveniles; intrafamily criminal offenses; proceedings in regard to divorce, separation, annulment, alimony, custody, and support of juveniles; proceedings under the Uniform Interstate Family Support Act.

(q) “Information” is any communication - recorded or unrecorded, record, or material that may identify individuals.

(r) “Juvenile Justice System” is the legal structure including law enforcement agencies, courts, detention facilities, probationary and re-entry services for diverting, detaining, adjudicating, supervising and discharging youth alleged or found to be delinquent.

(s) “Juvenile Court” is the court and court personnel responsible for diverting, adjudicating, detaining, confining, and supervising youth alleged or found to be delinquent.

(t) “Minor Delinquent Behavior” is conduct that does not rise to the level of significant or repeated harm to others, significant or repeated property loss or damage, or a threat of significant harm to others.

(u) “Outcome” is a pre-defined, objective measure of change of limited scope.

(v) “Records” are all reports, pleadings, court orders, and other documents prepared or gathered in connection with Juvenile and Family Court proceedings.

(w) “School Resource Officer” is a certified, sworn police officer employed by a local police agency but assigned to work in a school.
(x) "Staff-secure facility" is a facility that houses a small number of residents who have the freedom to enter or leave the premises.

(y) "Status Offense" is conduct that is prohibited only for persons under the age of majority, such as truancy, curfew violations, or running away from home.

(z) "Youth" is a person who has not yet attained the age of majority or otherwise is not subject to the jurisdiction of the criminal court; or who, as a result of a delinquency petition, remains subject to the juvenile court’s jurisdiction.

(aa) "Youth-Serving Agency or System" is an agency or system of agencies responsible for providing child welfare services, critical youth services, or behavioral health services.

**STANDARD 1.2 GENERAL PRINCIPLES**

(a) All youth need and deserve adequate care, education, and physical and behavioral health services.

(b) Child welfare and other youth-serving agencies should not refer a youth for law enforcement intervention for minor delinquent behavior.

(c) Cooperation between the juvenile justice system and other youth-serving systems is essential in differentiating between conduct that warrants intervention by the juvenile justice system and conduct that does not warrant such intervention, developing protocols that discourage inappropriate referrals to juvenile court, and developing positive support systems and behavioral strategies that reduce referrals to juvenile court.

(d) Information-sharing between and among juvenile justice and other youth-serving agencies should be regulated to accommodate the youth’s need for coordinated services, as well as the youth’s need for privacy and protection against self-incrimination.

(e) Locked and staff-secure facilities should only be used after arrest, during the court process, or as a dispositional option when needed for the protection of the community or to reduce a risk of flight.

(f) Services provided to youth removed from their home or community should be provided in the least restrictive setting and a setting that is close to family, consistent with public safety and the safety of the youth.

(g) Youth receiving critical youth services, child welfare services, or behavioral health services should be entitled to continuity in those services in the least restrictive setting consistent with public safety when they are removed from their home to the custody of the juvenile or criminal justice systems.

(h) Services for youth involved in the juvenile or criminal justice systems should be provided by appropriate youth-serving agencies in the community. When a youth is in detention or custody,
the youth should receive services comparable to those they would receive in the community, in a
setting that is close to family.

(i) Youth should have an opportunity to be heard, through the aid of counsel, regarding any
decision that affects their physical placement, need for and selection of services, and general well-
being.

(j) The juvenile justice system should ensure that youth needing services from both the child
welfare and juvenile justice systems receive the most appropriate services without adversely
affecting the severity or duration of the youth’s detention, placement, or probation supervision.

(k) Arrangements for follow-up treatment, services, placement, and protection that the youth will
need once released from custody should be made during the period of their confinement, be in
place upon their release, and not delay release.

(l) The child welfare system and agencies should not terminate services or close a youth’s
dependency case solely because the youth was arrested or adjudicated in the juvenile or criminal
justice system.

(m) Parents, guardians, and caretakers of youth involved in the juvenile justice system are entitled
to respect and the opportunity to participate in decision-making involving the youth if appropriate
for the youth’s legal interests, safety, and well-being.

(n) Youth released from custody should be reunited with their parents when in the youth’s best
interests; when reunification is not in the youth’s best interest, the youth should be placed in the
care of other appropriate relatives, the child welfare system, or other appropriate systems.

PART II: SYSTEMS COLLABORATION AND COORDINATION OF SERVICES FOR
DUAL-STATUS YOUTH

A. STATE STRUCTURE AND LEGISLATION

STANDARD 2.1 LEGISLATIVE PROVISIONS FOR EFFECTIVE CARE OF DUAL-STATUS YOUTH

(a) State laws and policies should ensure that dual-status youth continue to receive critical
youth services despite the youth’s involvement in the juvenile justice system.

(b) State and federal laws should eliminate funding barriers and statutory restrictions that
inhibit dual-status youth from accessing state and federal funding allocated for youth in the
child welfare system.

(c) State laws should mandate and facilitate interagency planning, coordination and
accountability between and among agencies that have a legal obligation to each youth.
(d) Mandatory arrest provisions in domestic violence and criminal justice statutes should not mandate arrests for youth who engage in minor delinquent behavior in congregate care facilities in the child welfare, juvenile justice, or other youth-serving systems.

STANDARD 2.2 STRUCTURE OF STATE JUVENILE JUSTICE AND CHILD WELFARE SYSTEMS

(a) State systems should be structured so that:

i. a single state agency is responsible for the licensing and regulation of programs for status offenders and delinquent and dependent youth and for ensuring that all residential facilities meet minimum licensing standards;

ii. non-secure juvenile justice programs have access to and may utilize child welfare funding, partially covered by federal support, for family-based care and small group placements that will support youth in less restrictive, community-based settings while affording them additional protections under federal law;

iii. child welfare services are available to juvenile courts and the courts may at any appropriate stage of the juvenile court proceedings enter any order authorized for a dependent youth; and

iv. dependent youth who are not adjudicated delinquent should not be placed in residential facilities that are primarily for the care of delinquent youth.

(b) State systems should engage behavioral health, education, and child welfare agencies and ensure that crisis intervention and other services are implemented to avoid the need for arrest and referral to the juvenile justice system.

(c) States should ensure that congregate care facilities in the child welfare, juvenile justice, and other youth-serving systems are able to meet the needs of the youth they serve, including addressing minor delinquent behavior, without relying on law enforcement for discipline.

B. FAMILY COURT ORGANIZATION, POLICIES, AND PROCEDURES

STANDARD 2.3 JUVENILE COURT POLICIES, PROTOCOLS, AND RULES

(a) Juvenile and Family Courts should establish policies and protocols that ensure the fair treatment of dual-status youth in diversion, detention, adjudication, and disposition decisions and eliminate practices that result in the unnecessary detention, adjudication, or prolonged incarceration of youth who are or should be served by the child welfare system.

(b) Juvenile and Family Courts should establish policies and protocols for delinquency complaints involving youth referred by or receiving services from the child welfare or other youth-serving systems. Such policies and protocols should:

i. recognize the in loco parentis role of the child welfare agency and require the agency to fulfill the role a responsible parent would be expected to fulfill when a youth comes into contact with the juvenile justice system;
ii. limit secure confinement to situations in which the youth meets detention criteria applied to other youth and ensure that a youth who does not have an in-tact home to which to return is not securely detained solely as a result of the youth’s family status;

iii. set strict timelines for the completion of the juvenile intake process;

iv. establish a process to determine whether a youth is better served in the juvenile justice system, the child welfare system, or by concurrent jurisdiction of the two;

v. develop procedures for providing accommodations to youth with disabilities;

vi. permit concurrent jurisdiction by the child welfare and juvenile justice systems when appropriate, and

vii. provide that a youth’s arrest or adjudication of delinquency will not result in the closure of a child welfare case or the termination of services from other youth-serving agencies solely because of the youth’s involvement in the juvenile justice system.

(c) Consistent with standards concerning information sharing and confidentiality in these standards and state and federal laws governing confidentiality and privilege, juvenile courts should develop policies and protocols for the prompt notification of a youth’s caregiver, child welfare caseworker, and attorney, and for the involvement of other youth-serving agencies as appropriate when a youth is arrested or referred to the juvenile court.

**STANDARD 2.4 JUVENILE COURT LEADERSHIP**

Juvenile courts should exercise leadership in developing working relationships and protocols with community agencies serving youth and families with multiple legal issues and in need of services from multiple systems.

**STANDARD 2.5 JUVENILE AND CRIMINAL COURT JURISDICTION**

(a) State laws governing the transfer of youth from juvenile court to adult court or from adult court to juvenile court should require probation officers, prosecutors, and juvenile court judges to consider the dual-status youth’s need for services from the child welfare and other youth-serving agencies in determining whether transfer is appropriate. The attorney for the youth should have an opportunity to present evidence as to the youth’s need for child welfare services.

(b) Juvenile courts should consider whether the child welfare and other youth-serving systems have fulfilled their duties to a youth before considering whether to transfer the youth to criminal court and should establish protocols to ensure that youth who receive services from multiple systems are not disadvantaged in discretionary transfer decisions solely due to their involvement in other systems.

(c) Consistent with public safety, state laws should permit transfer of youth from the criminal court to the juvenile court when the youth needs services from the child welfare, juvenile justice, or other youth-serving agencies.
(d) If a youth is transferred or has a case originally filed in criminal court, the youth should still be eligible for child welfare services, including social service placements and programs.

**STANDARD 2.6 DEPENDENCY JURISDICTION**

(a) Dependency courts should develop protocols that:

i. acknowledge the *in loco parentis* role of the child welfare agency and require the agency to fulfill the role a responsible parent would be expected to fulfill when a youth comes into contact with the juvenile justice system;

ii. ensure that a youth’s arrest or adjudication of delinquency will not result in the closure of a child welfare case or the termination of services from other youth-serving agencies solely because of the youth’s involvement in the juvenile justice system;

iii. prevent the use of civil and criminal contempt violations in the child welfare system as a basis for a delinquency petition;

iv. facilitate coordination, planning and accountability when the child welfare and juvenile justice systems have concurrent jurisdiction over the youth;

v. ensure that a youth’s defense counsel receives notice when the youth becomes involved in the child welfare system; and

vi. ensure that a youth’s dependency counsel receives notice when the youth becomes involved in the juvenile justice system.

(b) State laws should ensure that youth have a right to defense counsel and a court hearing at which they have the right to testify, present evidence, and cross-examine witnesses on the youth’s need for child welfare services and whether their dependency case will be terminated after an arrest or referral to juvenile or criminal court.

**STANDARD 2.7 DOCKETING PROCEEDINGS INVOLVING DUAL-STATUS YOUTH**

(a) In scheduling delinquency and other Family Court proceedings, clerks and other court personnel should be attentive to the youth’s and family’s obligation to appear in other legal proceedings. Court personnel should communicate with the youth and family to reduce multiple trips to court and court-related appointments and to avoid scheduling conflicts, school absences, and other avoidable inconveniences.

(b) Consistent with standards related to information sharing and confidentiality in these Standards and state and federal laws governing confidentiality and evidentiary privilege, juvenile court staff should have access to the docket of all Family Court cases so they can identify youth and families with multiple legal proceedings within the court.

(c) The same judge should consider all legal issues that involve the same family; however, to ensure fundamental fairness, each youth should have:
i. a lawyer at all stages of a delinquency and dependency case, including the intake, adjudicatory, disposition, post-disposition, and appellate stages;

ii. an adjudicatory hearing at which each charge of delinquency will be considered by a neutral judicial officer as consistent with due process and fundamental fairness;

iii. the right to notice of all hearings and case staffing or case management conferences related to the youth’s cases; and

iv. the right to attend all hearings and case conferences related to the youth’s cases and a meaningful opportunity to be heard as to the youth’s strengths, interests, disabilities, needs, and preferences regarding placement, services, and case outcomes.

(d) Juvenile and Family Courts should develop policies that allow for the consolidation of post-adjudication matters involving dual-status youth. The policies should be consistent with the following principles:

i. When feasible, a single judge should hear all dispositional and post-dispositional matters involving dual-status youth.

ii. After a youth has been adjudicated delinquent, the youth’s juvenile court dispositional proceedings should be consolidated with child welfare and other Family Court proceedings concerning the youth.

iii. The court should ensure continuity of legal representation for the youth throughout all phases of the delinquency matter, including disposition.

iv. The court should require that representatives responsible for case management and supervision of the youth in the child welfare and juvenile justice systems attend the consolidated proceeding.

v. The court should ensure, to the extent consistent with the missions of the child welfare and juvenile justice systems, that youth and family case plans be aligned in terms of goals, permanency planning, services, and responsibility for implementation.

(e) To the extent possible, services and other legal proceedings in the child welfare system should not be delayed pending resolution of a delinquency case, unless the youth or the youth’s defense counsel believes such a delay is necessary.

**STANDARD 2.8 DESIGNATED DUAL-STATUS DOCKETS**

(a) A jurisdiction should have authority to create a specialized dual-status docket for youth involved in both the juvenile and the child welfare systems, if it finds that the traditional juvenile court cannot effectively address cases involving youth with particular needs or characteristics.

(b) Dual-status dockets should be developed and implemented by an interdisciplinary team that includes representatives from the judiciary, prosecution, defense bar, best interest advocates, families, and relevant service providers.
(c) Youth assigned to a dual-status docket should have access to services from all systems that have expertise related to the youth’s needs.

(d) Dual-status dockets should provide an opportunity for youth to be diverted from the juvenile justice system or benefit from alternatives to detention at the pre-trial and disposition stage of the delinquency case.

(e) Judges presiding over dual-status dockets should utilize incentives for positive behavior, graduated responses to negative behavior, close judicial oversight, a team approach, coordination of services, and meaningful re-entry strategies.

(f) Judges presiding over dual-status dockets should ensure that any sanctions imposed serve a rehabilitative purpose.

(g) Courts with a dual-status docket should have rigorous intake and screening procedures to ensure the Court accepts only those youth who are appropriate for the dual-status docket.

(h) The interdisciplinary team responsible for developing a dual-status docket should adopt policies and protocols that ensure that:

1. the youth’s due process rights are protected at all stages of the delinquency case, including the youth’s right to a fair and impartial hearing at the adjudicatory and disposition stages of the case;
2. the parents’ due process rights are protected at all stages of the dependency case, including the parents’ right to a fair and impartial hearing to adjudicate any allegation of abuse or neglect;
3. the youth and the youth’s defense counsel have a right to be heard and participate in all decisions regarding the youth’s placement and service plan;
4. youth and parents with disabilities receive accommodations necessary to ensure meaningful participation at all stages of the case; and
5. when the youth is not diverted from the juvenile justice system before adjudication, the youth’s dependency case should not be consolidated with a delinquency case on a dual-status docket unless and until there is an adjudication of delinquency.

(i) Dual-status dockets should be presided over by a judge instead of a referee, master, or magistrate.

(j) A judge presiding over a dual-status docket should have authority to dismiss the delinquency petition for a youth who has successfully completed the requirements set by the dual-status court.
C. INTERSTATE COOPERATION

STANDARD 2.9 DUAL-STATUS YOUTH CROSSING STATE AND LOCAL JURISDICTIONS

(a) Courts and state legislatures, individually or with neighboring states, should develop policies and procedures consistent with the Interstate Compact for Juveniles, the Interstate Compact on the Placement of Children, and the Uniform Child Custody and Jurisdiction Act that will facilitate cooperation by justice system personnel and youth-serving agencies in addressing cross-jurisdictional issues.

(b) Policies and procedures for cross-jurisdictional cooperation should focus on:

i. reducing delay, uncertainty, and unnecessary detention of youth,
ii. providing prompt resolution of legal matters involving dual-status youth,
iii. expediting the necessary transport of dual-status youth across jurisdictions, and iv. avoiding scheduling conflicts for youth and families with legal obligations in multiple jurisdictions.

(c) Policies and procedures should adopt a presumption that legal proceedings will take place in the jurisdiction where the youth has the most significant ties.

(d) Policies and procedures to facilitate cross-jurisdictional cooperation should abide by principles of confidentiality and privacy.

D. INFORMATION SHARING AND DATA COLLECTION

STANDARD 2.10 PURPOSES OF INFORMATION SHARING AND DATA COLLECTION

(a) Information sharing and data collection are necessary for any effective collaboration and coordination of services for dual-status youth.

(b) States should authorize and facilitate the sharing of information about individual youth between and among multiple systems and agencies to

i. reduce duplication of assessments and services for the youth and the youth’s family,
ii. enhance understanding of the youth’s strengths, interests, preferences, needs, and
iii. improve individual case planning and decision-making for the youth.

(c) States should authorize and facilitate the collection of data for aggregate reporting on the characteristics of dual-status youth and the processes for handling those youth.

(d) States should use data:

i. to improve the policies, practices, and coordinated responses of agencies responsible for the care of and provision of services to dual-status youth, and
ii. to evaluate the need for and effectiveness of programs and practices designed to achieve improved outcomes for youth.

STANDARD 2.11 POLICIES AND PROCEDURES FOR CONFIDENTIALITY DURING INFORMATION SHARING

(a) All states should develop and require the use of protocols for information sharing about individual dual-status youth from arrest to termination of jurisdiction.

(b) All agreements or protocols to share information between the juvenile justice system and other youth-serving systems and agencies should ensure that information-sharing protocols provide appropriate protection for the privacy of youth and their families and follow federal and state law and ethical requirements regarding confidentiality of privileged information.

(c) All agreements or protocols should specify the purposes of information sharing and limit the information shared to the specified purposes.

(d) States should limit the use of information about the youth’s involvement in multiple systems to the coordination of case management and the continuity and integration of services and treatment. Protocols should:

   i. prohibit the unauthorized disclosure of, or unauthorized access to, information relating to the dual-status youth, and
   ii. develop quality control measures that minimize the inadvertent disclosure of information relating to the youth.

(e) Absent an explicit exception under applicable state and federal law, juvenile justice agencies and professionals should always obtain informed written consent from the youth and the parent or guardian of the youth, before sharing personally identifiable information between agencies serving the youth. Youth, parents, or guardians with disabilities should receive accommodations necessary to provide informed consent.

(f) Any written consent for information sharing should state the purpose of sharing, the specific information to be shared, and the time frame within which the information will be shared.

(g) Information about dual-status youth should be shared with and used by youth-serving agencies in a manner that complies with state and federal laws governing confidentiality, including re-disclosure and privilege, and protects the youth’s right against self-incrimination and right to due process as a respondent or defendant in any delinquency, criminal, summary offense, status offense, or child welfare case.

(h) Juvenile justice officials sharing information about dual-status youth should ensure that any youth-serving agency and system receiving that information is aware of and adheres to rules and standards governing confidentiality of Family Court records, including
restrictions on the dissemination of physical and behavioral health records and limitations
on the use of records for specified purposes.

(i) The juvenile court and other youth-serving agencies should develop docketing, filing,
and records-disclosure systems that will allow court staff to redact and separate records
and information that may be disclosed from those that may not be disclosed pursuant to
state and federal confidentiality laws.

STANDARD 2.12 DATA COLLECTION FOR LAW, POLICY, AND PROGRAM DEVELOPMENT

(a) Courts, legislatures, and state agencies should develop a system for collecting,
reporting, and sharing data regarding dual-status youth to achieve one or more of the
purposes identified in Standard 2.10 of these standards.

(b) Courts, legislatures, and state agencies should use data collection to improve outcomes
for dual-status youth and to reduce unnecessary referral to and penetration into the juvenile
and criminal justice systems.

(c) Lawyers, judges, and other government agents should ensure that data collection
protocols comply with applicable rules regarding confidentiality.

(d) Courts and state legislatures should periodically review the aggregate data collected to
determine how to allocate resources to youth-serving agencies and systems within the
jurisdiction, to improve procedures for handling youth who engage in delinquent behavior
while in the care or custody of a youth-serving agency, and to improve the continuity of
care for youth in multiple youth-serving systems.

STANDARD 2.13 ACCESS TO COURT RECORDS

(a) The use of and access to Family Court records should be strictly controlled to limit the
risk of unnecessary and harmful disclosure.

(b) Court records involving youth alleged or adjudicated delinquent or dependent should
normally be closed to the general public.

(c) Juvenile justice officials who disclose information about dual-status youth should
ensure that all recipients of that information are informed of all rules and standards
governing confidentiality of Family Court records.

(d) Courts and state legislatures should develop and enforce meaningful sanctions for the
unlawful dissemination of Family Court records.

(e) Juvenile justice professionals who disclose information about dual-status youth should
separate records that may be disclosed from those that may not be disclosed and redact
disclosed records accordingly.
(f) Defense counsel in any juvenile or criminal case in which a youth is involved should normally have access to all Family Court records involving the youth.

(g) The Family Court should avoid standing orders or policies that grant the public, court staff, juvenile justice officials, or other youth-serving agencies broad access to any category of records generally found within a Family Court file. Instead, the Court should develop policies and protocols to grant access to such records only after a judicial officer or appropriate designate makes an individualized analysis of a records request.

STANDARD 2.14 WAIVERS OF CONFIDENTIALITY

(a) Juvenile justice or other youth-serving agency officials may ask a youth to waive confidentiality protections.

(b) A youth’s waiver is valid only if it is made knowingly, intelligently, and voluntarily.

(c) If a youth has appointed or retained counsel, agency officials should permit the youth an opportunity to consult with counsel before waiving any confidentiality protections. Waivers obtained without such an opportunity should be considered presumptively invalid.

(d) In advising a youth regarding a possible waiver of confidentiality, the youth’s lawyer should ensure the youth understands privilege, the youth’s rights with respect to consent and confidentiality, and the potential consequences of waiving confidentiality or privilege in releasing information to others.

(e) Agency officials should allow a youth to consult with a parent or guardian before waiving any confidentiality protections; but a parent cannot waive the youth’s rights or privileges. In a delinquency proceeding, the decision to waive should be the youth’s.

(f) Any written waiver form should use youth-appropriate language and be written in a language the youth speaks or understands. If a youth has limited literacy, any waiver should be obtained and recorded in a manner that is understandable to the youth.

(g) A youth may negotiate the terms of the waiver to limit the time, scope or purpose of the waiver.

(h) A parent or guardian may waive confidentiality protections for records involving the parent.

E. CROSS-SYSTEM TRAINING

STANDARD 2.15 NEED FOR CROSS-SYSTEM TRAINING

(a) Family Courts and youth-serving agencies should promote training for all professionals in the juvenile justice and child welfare systems to reduce inappropriate referrals to the juvenile justice system.
(b) Training should include:
   i. the scope and availability of services and means for accessing services from the child welfare, behavioral health, physical health, public benefits, Family Court, and education systems;
   ii. information regarding any memoranda of understanding or other agreements between and among the various youth-serving agencies regarding the provision of services for youth;
   iii. laws, rules, and procedures applicable to confidentiality and privilege;
   iv. the role of the youth’s defense counsel and best interest advocate for the youth;
   v. child and adolescent development, brain development, disabilities, trauma, and resiliency development;
   vi. sexual orientation and gender-identity;
   vii. cultural competence;
   viii. racial bias;
   ix. evidence-based research on the effectiveness of services and programs in achieving good outcomes for youth in the juvenile justice and child welfare systems;
   x. family and youth engagement; and
   x. the immigration consequences of the youth’s involvement in the child welfare or juvenile justice system.

PART III: ARREST AND REFERRALS TO THE JUVENILE JUSTICE SYSTEM

STANDARD 3.1 GUIDELINES FOR CHILD WELFARE AGENCIES

(a) Child welfare agencies should adopt policies discouraging staff from referring youth to the juvenile justice system for minor delinquent behavior.

(b) Child welfare agencies should have protocols for responding to delinquent and status offense behavior by youth in their care. These protocols should:
   i. be developed in consultation with representatives of other youth-serving agencies, including the juvenile court, probation, behavioral health, schools, law enforcement, prosecution, defense, best interest advocates, and community service providers;
   ii. set forth the specific procedures to be followed when a youth violates rules of a program or placement or engages in behavior that poses a threat to others in a program or placement;
   iii. specify behavioral support or staffing strategies that agencies should utilize instead of referral to law enforcement;
   iv. be in writing, made available to agency staff and youth served by the agency, and be incorporated into any agency staff training; and
   v. provide for periodic review and revision of the protocols.

(c) Staff in child welfare or other youth-serving agencies and facilities should be trained in crisis intervention techniques, including strategies to de-escalate youth behavior arising out of behavioral health or other disability-related needs, and such techniques should be employed first, before any law enforcement referral.
(d) Public child welfare agencies that contract with private service providers should, in the contracts, set forth the circumstances under which those agencies may refer youth to law enforcement and provide guidance on alternatives to law enforcement and juvenile court referrals in case of a behavioral crisis or placement concerns.

**STANDARD 3.2  RESPONSIBILITIES OF LAW ENFORCEMENT IN RESPONDING TO REFERRALS INVOLVING DUAL-STATUS YOUTH**

(a) In deciding whether to arrest, divert, warn, detain, or refer a youth to the juvenile court, law enforcement officers should:
   i. have a presumption against arresting youth who have been referred from the child welfare system to the juvenile justice system for minor delinquent behavior; and
   ii. consider whether the youth is or can be engaged with other youth-serving systems or agencies that will work to ensure the youth’s appearance in court, divert the youth from custody or supervision, and minimize the youth’s risk to public safety.

(b) Law enforcement agencies should develop inter-agency crisis intervention strategies that discourage arrests of youth experiencing emergency behavioral health crises that do not create a serious risk to public safety.

(c) If a youth needs emergency psychiatric or other behavioral health intervention, law enforcement officers should contact a behavioral health mobile crisis team; if such a team is not available, the officers should take the youth into custody without arrest and transport them to an appropriate crisis intervention facility.

(d) When a youth appears to be homeless, a runaway, or declines to give home contact information, the law enforcement agency should determine whether the youth is under the care or supervision of the child welfare agency, and if not should determine whether the youth should be referred to an appropriate youth-serving agency.

(e) Law enforcement should notify the caregiver or welfare caseworker of any youth who is arrested while committed to a child welfare agency.

**STANDARD 3.3  RESPONSIBILITIES OF LAW ENFORCEMENT, SCHOOLS, AND JUVENILE COURTS IN RESPONDING TO SCHOOL-RELATED CONDUCT**

(a) The primary authority responsible for school climate, discipline, and school safety is the school principal. Police should not be deployed in schools absent a significant showing of a demonstrable, time-limited need to protect students. If police are to be deployed in schools, memoranda of understanding and guidelines regarding their interaction with school officials and the scope and parameters of their authority should be established consistent with the principles set forth in these standards.
(b) Law enforcement, including school resource officers (hereinafter SROs) should not arrest or refer youth to the juvenile justice system for minor delinquent conduct at school and should not have primary responsibility for the enforcement of school discipline.

(c) Law enforcement personnel interacting with youth in schools should interact with students in ways that foster positive relationships and promote a better understanding of each other and should not be limited to arrest and law enforcement.

(d) Schools should adopt written policies and establish protocols limiting the presence and use of SROs in accordance with the principles set forth in section (e) below. Law enforcement, including SROs, should not be assigned within schools on a permanent basis, and school and law enforcement officials should periodically reassess the need for law enforcement presence and use.

(e) Formal law enforcement intervention includes issuance of a citation, ticket, or summons, filing of a delinquency petition, referral to a probation office, searches, use of restraints, or actual arrest. Law enforcement officials should not initiate formal law enforcement intervention for school-related conduct except as permitted in written protocols developed in accord with principles set forth in section (f) below.

(f) Law enforcement agencies should work with school officials to develop written protocols to ensure that referrals to the juvenile court from schools are not for behavior that is more appropriately handled by the school. Such protocols should:

i. allow law enforcement officials, including SROs, to transport a truant youth back to school without an arrest or referral to the juvenile justice system, and encourage school officials to develop educational programs, social services, and public health responses to truancy in lieu of arrest;

ii. promote programs that are preventive, educational, and recreational to guide young people away from negative behaviors;

iii. develop guidelines that limit disruption in educational placement or receipt of educational services resulting from law enforcement intervention;

iv. encourage schools to implement disciplinary practices that:

   a. are age and developmentally-appropriate;

   b. are culturally competent;

   c. engage the youth and family;

   d. take into account that a student’s behavior may be related to a disability.

v. reject zero tolerance policies and mandatory suspension, expulsion, arrest, or referrals of students to juvenile or criminal court without regard to the circumstances or nature of the offense or the student's disability or history.

(g) Students should be involved in the development of school-law enforcement protocols and memoranda of understanding.

(h) Law enforcement personnel, including SROs, who may have contact with students, especially those students who may be involved in the child welfare system, should receive extensive training that includes the following topics:
i. youth and adolescent development and psychology;
ii. the effects of neglect, abuse, and trauma, including the exposure to violence;
iii. the effects of disabilities on behavior and the effects of medication taken to ameliorate the symptoms of disabilities;
iv. common disabilities for youth and the protections afforded to youth under the Individuals with Disabilities Education Act (IDEA);
v. conflict resolution, peer mediation, and restorative justice techniques;
vi. cultural competence and gender and sexuality sensitivity;
vii. research-based practices in de-escalation and alternative responses to the use of restraints against youth except in situations involving an arrest and serious and immediate threat to the physical safety or health of a member of the school community.

(i) Both school districts and law enforcement should maintain data to assist in evaluating the presence and use of law enforcement, including SROs. Each data point should be disaggregated by offense, student’s age, grade level, race, sex, disability status, eligibility for free or reduced lunch, English language proficiency, and disposition. Data collection should include the number of:

1. law enforcement personnel, including SROs, deployed to each school;
2. school-based arrests (arrests of students that occur on school grounds during the school day or on school grounds during school-sponsored events) at each school;
3. referrals to the juvenile justice system for each school;
4. citations, summons or other actions taken by police personnel for each school; and
5. suspensions, in and out of school, and expulsions at each school.

(j) Juvenile courts and law enforcement should not inform a school of a student’s involvement in the court system for conduct which occurred off school grounds unless the conduct is likely to have an impact on school safety.

(k) Juvenile courts should annually review all data collected on school-based referrals to identify high rates of referral from particular schools or for a particular youth demographic. If referrals are for a disproportionately high rate of referral for youth of color, the juvenile court and law enforcement officials should work with schools to develop protocols that will reduce unnecessary or inappropriate referrals from the schools and reduce disproportionality.

(l) Legislatures should repeal or amend laws, including zero tolerance laws that require schools to refer youth to law enforcement agencies for minor delinquent behavior.

(m) Legislatures should protect the confidentiality of Family Court records by amending statutes that require courts and/or law enforcement agencies to notify schools about arrests to prohibit such notification unless the student conduct is likely to have an impact on school safety.
STANDARD 3.4 RESPONSIBILITIES OF CHILD WELFARE AND JUVENILE JUSTICE AGENCIES IN ADDRESSING THE EDUCATIONAL NEEDS OF DUAL-STATUS YOUTH

(a) Child welfare and juvenile justice agencies should work with local school districts to develop inter-agency agreements that:
   i. allow youth to remain in the same school, when practicable, even when the agency places a youth outside the school district area,
   ii. ensure the timely transfer of education records and credit information to whatever school a youth will attend, and
   iii. ensure a seamless re-entry of students discharged from a child welfare or juvenile justice placement back to the youth’s home school.

(b) Child welfare and juvenile justice agencies should work with the relevant school district to ensure that every youth in out-of-home placement receives an education appropriate for the youth’s grade level, special educational needs, and academic or career goals.

PART IV: JUVENILE INTAKE AND DETENTION

STANDARD 4.1 RESPONSIBILITIES OF PROBATION OFFICES AT INTAKE

(a) Probation staff should develop written protocols to guide intake decisions and guard against the inappropriate processing of dual-status youth in the juvenile justice system. Protocols should:
   i. encourage the diversion of dual-status youth who engage in minor delinquent behavior from the juvenile justice system; and
   ii. encourage the delivery of services through youth-serving systems other than the juvenile justice system.

(b) Consistent with Standard 2.11 of these standards concerning Information Sharing, probation staff should examine relevant databases to determine whether a youth or a youth’s family is or has been involved in other youth-serving systems.

(c) In deciding whether to recommend action or inaction by the juvenile court for a youth referred from the child welfare system, probation staff should consider:
   i. the seriousness of the offense;
   ii. any information about the youth’s mental health status, treatment history, prescribed medications, educational status, and care and supervision by other youth-serving agencies and systems;
   iii. whether and to what extent the alleged behavior was related to the youth’s disabilities, mental health issues, exposure to violence, prior placement deficiencies, substance abuse, or other identifiable factors;
   iv. whether the child welfare system made reasonable efforts to improve the youth’s placement or services and prevent the referral to juvenile court;
   v. whether services for the youth or family, such as crisis intervention or respite, could alleviate the need for a delinquency court referral; and
vi. whether the juvenile justice system has non-confinement placements that are appropriate for the youth.

(d) Probation staff should not recommend a delinquency petition if the youth’s conduct is more appropriately addressed by another youth-serving agency or system. Probation staff should avoid:

i. duplication of services when the youth is already receiving or may receive similar services from a less restrictive, less coercive agency outside of the juvenile justice system; and

ii. processing the youth in the juvenile justice system when the juvenile justice system cannot effectively serve the youth because of the youth’s developmental limitations, disabilities, or other cognitive or mental health impairments.

(e) Probation staff should refer dual-status youth for community-based services that are suitable for the youth’s age, ethnicity, gender or sexual identity, cognitive disability, and developmental stage.

STANDARD 4.2 RESPONSIBILITIES OF JUDGES AND PROBATION OFFICES IN RECOMMENDING DETENTION OR RELEASE

(a) Probation offices should adopt written protocols and develop risk assessment instruments to guide detention and release decisions involving dual-status youth.

(b) In deciding whether to recommend detention or release for youth referred from the child welfare system, probation staff should use the same criteria applied to other youth. Those criteria should be objective and determine whether the youth poses a risk of danger to the community or failing to appear. Other criteria should include:

i. the existence of services available from other youth-serving agencies to address the youth’s needs and reduce the youth’s risk of flight or risk to public safety; and

ii. whether detention will jeopardize placement or services provided by other youth-serving agencies.

(c) Probation staff should not recommend detention:

i. because the youth is awaiting suitable placement in the child welfare system;

ii. as a respite for caregivers in the child welfare system; or

iii. when other youth-serving systems are providing or can provide placement and services that protect the court’s and the public’s interests.

(d) The intake officer should not recommend detention in a facility that cannot adequately meet a youth’s special, physical, or behavioral health needs.

(e) If a youth is detained, probation staff should, consistent with Standard 2.12 of these standards concerning Information Sharing:

i. advise other agencies currently serving the youth that detention is temporary, and seek to preserve the placement and services the youth is receiving from those agencies;
ii. provide detention staff with information about the youth’s strengths, interests, preference, educational needs, and physical or behavioral health needs; and
iii. facilitate communication between the detention staff and other agencies serving the youth.

STANDARD 4.3 DIVERTING DELINQUENCY TO DEPENDENCY AND MAINTAINING DUAL JURISDICTION

(a) Juvenile court judges have authority to divert a delinquency petition to a child welfare or status offense petition.

(b) The decision to dismiss or divert should be made as early as possible.

(c) A judge presiding over child welfare proceedings should be authorized, when the youth is facing delinquency proceedings or has been adjudicated delinquent, to keep the child welfare matter open so the youth may receive necessary child welfare services.

4.4 JUDICIAL RESPONSIBILITIES REGARDING DETENTION

(a) In deciding whether to order detention or release for youth referred from the child welfare system, the juvenile court judge should use the same criteria applied to other youth. Those criteria should be objective and determine whether the youth poses a risk of danger to the community or failing to appear. Other criteria should include:
   i. the existence of services available from other youth-serving agencies to address the youth’s needs and reduce the youth’s risk of flight or risk to public safety; and
   ii. whether detention will jeopardize placement or services provided by other youth-serving agencies.

(b) The juvenile court judge should not order detention:
   i. because the youth is awaiting suitable placement in the child welfare system;
   ii. as a respite for caregivers in the child welfare system; or
   iii. when other youth-serving systems are providing or can provide placement and services protect the court’s and the public’s interests.

(c) The juvenile court judge should not order detention in a facility that cannot adequately meet a youth’s physical or behavioral health needs.

(d) A judge who has concurrent jurisdiction over delinquency and child welfare matters may order the appropriate child welfare agencies to:
   i. arrange a suitable nonsecure placement for a youth as an alternative to detention in the juvenile justice system; or
   ii. continue providing services for a youth in detention.
Standard 4.5 Intake and Detention of Pregnant or Parenting Youth

(a) Juvenile justice professionals should develop protocols to ensure that pregnant or parenting youth in the juvenile justice system have:
   i. basic support and critical services to reduce the risk that they will engage in abusive or neglectful behavior toward their own children;
   ii. physical and behavioral health services commonly provided for high risk pregnancy and child-rearing;
   iii. alternatives to detention and pretrial release and disposition plans that address the youth’s needs in caring for their own children;
   iv. opportunities for detained youth to visit with and engage their children; and
   v. opportunities for parenting, financial management, and independent living skills training.

(b) When addressing alleged behavior by pregnant or parenting youth, juvenile justice professionals should seek to minimize harm to the health of the youth’s child and minimize disruption in the child’s living arrangements.

(c) Juvenile justice professionals should give special consideration to alternatives to detention during a youth’s pregnancy and at least the first year of the newborn’s life.

(d) When a judge detains a pregnant youth, juvenile justice professionals should address special prenatal needs of the youth by ensuring:
   i. adequate prenatal care, including regular doctor visits, child-birth classes, and dietary supplements;
   ii. sanitary living conditions to reduce the risk of trauma and infection;
   iii. access to reproductive health counseling; and
   iv. no use of physical restraints during the term of pregnancy unless there are serious and immediate risks to the safety of the youth or others, in which case the least restrictive means of restraint should be used.

(e) During labor and delivery for detained youth, juvenile justice authorities should ensure that:
   i. the detained youth is transported to an appropriate medical facility without delay, and
   ii. shackles or other restraints are not used.

(f) After delivery, juvenile justice professionals should allow the mother and child to be together at least the first year, in the least restrictive placement possible. Professionals should:
   i. develop re-entry plans that focus specifically on pregnant and parenting youth;
   ii. ensure that parenting youth are provided appropriate postnatal care and services, including parenting classes, continued doctor visits, and behavioral health services as appropriate;
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iii. facilitating placements that permit the child to reside with a parent or, if not possible or in the best interests of the child, facilitate visits between the youthful parent and their child, including overnight and contact visits; and

iv. facilitate visits with family or other caregivers providing care for the youth’s child.

(g) Any diversion, disposition, and re-entry plan developed for pregnant or parenting youth should seek to reduce the chance that the youth’s child will be placed in the child welfare system.

PART V: REFERRING YOUTH FOR SERVICES

STANDARD 5.1 ACCESSING BEHAVIORAL HEALTH SERVICES

(a) To reduce the high rates of mental health and substance abuse conditions among dual-status youth, every jurisdiction should have a system that:

i. provides for early identification of youth in the child welfare and juvenile justice systems who have mental health or substance abuse conditions;

ii. seeks to prevent the unnecessary involvement in the juvenile justice system of children who need mental health or substance abuse services;

iii. provides for timely access by youth in the child welfare system to appropriate mental health treatment by qualified professionals within the least restrictive setting that is consistent with public needs and reduces the risk of delinquent behavior by these youth.

(b) A comprehensive system to address youth with mental health or substance abuse disorders should provide:

i. screening and assessment at entry and key points in the child welfare and juvenile justice processes;

ii. a continuum of evidence-based services at all stages of the youth’s involvement in the child welfare and juvenile justice systems, including short-term interventions and crisis services, on-going supportive services, and continuity of care;

iii. family involvement in the least restrictive setting;

iv. protections against self-incrimination when youth participate in court-ordered mental health or substance abuse screening, assessment, and treatment; and

v. sustainable funding mechanisms to support the above.

(c) Juvenile justice authorities should have authority to obtain services from other youth-serving systems, including state and local child welfare, physical and behavioral health, physical health, educational, and alcohol and drug abuse treatment systems.

(d) Juvenile and child welfare courts should have authority to obtain services for youth with mental health and substance abuse conditions without having to alter the legal custody of the youth or transfer jurisdiction to another court or system.
PART VI: DELINQUENCY ADJUDICATION OF DUAL-STATUS YOUTH

STANDARD 6.1 DUE PROCESS AT ADJUDICATORY HEARING

(a) Charges of delinquency should be adjudicated at a full due process hearing by a judge who is a neutral fact-finder. The juvenile court judge should:

   i. not be influenced by knowledge of or prior interactions with the youth or the youth’s family in a dependency case or other legal matters;
   ii. make a determination of delinquency based on admissible evidence in the delinquency record; and
   iii. not review information relating to the youth’s involvement in a dependency case unless:
       a. review is requested by a party to the delinquency case, and
       b. the information is relevant and appropriate for judicial review under applicable rules of evidence.

STANDARD 6.2 LEGAL REPRESENTATION IN A DELINQUENCY CASE

(a) Youth charged with delinquency are entitled to competent, loyal, and zealous representation by defense counsel. A “best interests” advocate for a child in a dependency proceeding should not also serve as the youth’s defense counsel in a delinquency case.

(b) Incriminating statements made by a youth to a best interest advocate who is not bound by the rules of the attorney-client confidentiality should be inadmissible in a delinquency hearing absent a knowing, voluntary, and intelligent waiver.

PART VII: DISPOSITION OF DELINQUENCY CASES

STANDARD 7.1 INFORMATION GATHERING AND INFORMATION SHARING FOR DISPOSITION

After adjudication, records relating to a youth’s child welfare case may be reviewed by the juvenile court to:

   i. avoid conflicting court orders;
   ii. ensure effective case management; and
   iii. assist in the development of an effective disposition plan.

STANDARD 7.2 DISPOSITION PROCESS

(a) If a youth is adjudicated delinquent, the court should hold a full due process hearing to determine the youth’s appropriate disposition. The youth’s disposition hearing should be consolidated with child welfare proceedings involving the youth if the court determines that such proceedings will advance the best interests of the youth and promote efficient and effective coordination of services. Youth and family members with disabilities should receive accommodations necessary for meaningful participation in the proceedings.
(b) Risk or needs assessment tools used in disposition planning for dual-status youth should be validated and targeted to achieve the youth’s best long-term interests in either the child welfare or delinquency system.

(c) Results of any risk or needs assessment tools should be in writing and provided to the parties, and any persons who administered the tool should be available for examination by the parties.

(d) Jurisdictions should develop protocols and teams to aid disposition planning for dual-status youth. Such teams should include representatives from youth-serving agencies necessary to address the youth’s needs, as well as the youth, the youth’s parents, guardian or caretaker, defense counsel, best interest advocate, service provider, and representatives from the state, such as a probation officer or prosecutor.

(e) When a youth participates in a disposition team meeting, the youth should be advised that the team will consider any information the youth provides in making placement decisions.

(f) The juvenile court judge should:
   i. designate a lead agency responsible for coordinating services for the youth;
   ii. direct that disposition team meetings be completed before disposition, and expedited when a youth is detained pending disposition; and
   iii. order that the team prepare a written disposition report with a statement of reasons explaining how the recommendations will advance the best interests of the youth and the goals of the state’s juvenile justice code. That report should be distributed to all parties including the youth and defense counsel in advance of the disposition hearing. The author of the report should be available for examination at or before the hearing.

(g) All parties should be permitted to review and respond to any information or testimony that will be or is presented to the court at the disposition hearing.

**STANDARD 7.3 POSTPONEMENT OF DISPOSITION**

(a) The court may temporarily postpone disposition in a delinquency case, and recommend referral to the appropriate child welfare agency that can serve the youth with minimal risk to public safety, when a delinquent youth is in immediate need of services from or awaiting placement by the child welfare system. Any such referral should be expedited if possible.

(b) The child welfare system should develop processes for expediting cases for delinquent youth who are pending disposition in a delinquency proceeding.
STANDARD 7.4 DISPOSITION OPTIONS

(a) Courts ordering disposition for dual-status youth should be aware of and utilize all disposition options that are legislatively available for youth in the child welfare and delinquency systems.

(b) The juvenile court should order the least restrictive disposition that furthers the best interests of the youth and the goals of the juvenile justice system.

(c) Disposition options should include:
   i. termination of the delinquency jurisdiction;
   ii. referral to other youth-serving systems;
   iii. maintaining dual jurisdiction; or
   iv. disposition within the delinquency system while providing access to other youth-serving services, systems or agencies.

(d) Juvenile courts should have authority to
   i. review service, rehabilitative, and disposition plans developed in the child welfare system;
   ii. modify child welfare plans that are in conflict with the goals of the juvenile justice system; and
   iii. require child welfare and juvenile justice agencies to coordinate planning to satisfy their obligations to the youth.

(e) All youth who are adjudicated delinquent should have access to the same publicly-funded services that are available to non-delinquent youth.

(f) Juvenile court judges and probation officers should assist youth in obtaining services from other youth-serving systems and develop protocols for expeditious service delivery from such systems and agencies.

STANDARD 7.5 DISPOSITION ORDERS

(a) Disposition orders that place the youth out of the home should include:
   i. a plan to maintain the youth’s connection to parents, caregivers, or others who are important to the youth;
   ii. a reunification or permanency plan that seeks to reunite the youth with family, caregivers or other significant supportive adult, to identify some other permanent stable living arrangement; and
   iii. a re-entry and discharge plan that specifies where and how, after release from detention or residential placement, the youth will be educated, work, and receive appropriate services.

(b) Disposition orders should set forth the services expected from each agency and set regular status review hearings to assess compliance with the order.
STANDARD 7.6 MODIFICATION OF DISPOSITION ORDERS

(a) Juvenile courts should have authority to review and modify if necessary, any component of a disposition order for dual-status youth.

(b) Courts should not modify any disposition ordered until after notice to, and opportunity to be heard by, all parties.

(c) After disposition, any party in a delinquency case should have authority to petition the court, and the court should have authority to:
   i. reduce the restrictiveness or duration of disposition when more appropriate and less restrictive options have become available; or
   ii. increase the restrictiveness or duration of disposition only when the youth has violated the terms or conditions of disposition and the services being provided are not adequately addressing the youth’s needs or ensuring public safety and no equally or less restrictive options are available.

(d) The court should not have authority to increase the restrictiveness or duration of disposition for a dual-status youth until after a full due process hearing, with counsel and an opportunity for the youth to be heard. Youth and family members with disabilities should receive accommodations necessary for meaningful participation in the proceedings.

(e) Absent informed consent by the youth, neither the restrictiveness nor the duration of disposition should be increased just to ensure the youth’s access to funding.

PART VIII: POST-DISPOSITION AND RE-ENTRY

STANDARD 8.1 KEY PRINCIPLES GOVERNING RE-ENTRY AND DISCHARGE PLANNING

(a) Re-entry into the community and discharge from the juvenile justice system should be planned to include coordination with the child welfare system and ensure that dual-status youth receive all services they may need and all benefits to which they may be entitled.

(b) Re-entry and discharge planning should provide youth with a stable residential placement with appropriate services, support, and supervision from the child welfare and juvenile justice systems to promote their success in the community after discharge.

(c) Re-entry and discharge planning should:
   i. require the juvenile justice system to begin re-entry and discharge planning at or before disposition and complete it well in advance of the re-entry or discharge;
   ii. identify and implement services that, at a minimum, address continuity of education (including special education), housing, employment, and the need for physical and behavioral health services; and that are timely and coordinated across systems and agencies;
   iii. allow the filing of a petition for dependency, voluntary placement, or re-entry into foster care before a youth’s 18th birthday, or whatever older age state law
permits, if it appears the youth will need housing or other services when juvenile court jurisdiction terminates;  
iv. specify that delay in identifying, securing, or arranging appropriate post-discharge services may not be relied on to extend the duration of a residential placement; and  
v. allow the youth and the youth’s family and counsel to participate fully in the development and periodic reviews of the re-entry plan.

**STANDARD 8.2 IMPLEMENTATION OF RE-ENTRY AND DISCHARGE PLAN**

(a) Youth discharged from residential placement but remaining under supervision of either the child welfare or delinquency system should have case managers assigned and trained to ensure timely and coordinated implementation of the youth’s re-entry and discharge plan.

(b) Each agency with responsibility to the youth should:

i. participate in a discharge planning meeting with other service providers at least thirty (30) days in advance of the anticipated discharge date;  
ii. ascertain, before discharge, the youth’s strengths, interests, preferences and needs regarding services;  
iii. identify and secure, before discharge, a residence for the youth, to avoid delay in discharge; and  
iv. assist youth in obtaining important documents (such as identification or driver’s license and birth certificates) as well as coverage for essential services such as healthcare.

**PART IX: APPEALS**

**STANDARD 9.1 RIGHT TO APPEAL**

(a) Dual-status youth should have the same right to appeal any order of the Family Court as any other youth. The right to appeal should include a review of the facts, law, and disposition order. Procedural safeguards should exist to ensure that youth are not penalized due to delays and other consequences arising out the youth’s involvement in multiple legal matters.

(b) A youth involved in multiple legal matters should be entitled to appellate review of, at a minimum:

i. all orders of a juvenile or dependency court that dispose of any portion of any case or matter;  
ii. inconsistent orders in the youth’s delinquency, dependency or other matters; and  
iii. orders that do not embody the least restrictive alternative to achieve the best interests of the youth and the goals of multiple systems.
STANDARD 9.2 WRITTEN COURT ORDERS AND ADVICE OF RIGHTS

(a) At the conclusion of any judicial proceeding involving dual-status youth and their families, the judge should:
   i. prepare a final written order delineating the court’s rulings, the facts found, the law applied, the disposition ordered, and the reasons therefore;
   ii. advise the youth (and family) of the right to appeal;
   iii. advise the parent or guardian of the right to appeal in dependency proceedings; and
   iv. inquire of the youth’s financial status, appoint appellate counsel if youth is indigent, or instruct defense counsel to secure the appointment of appellate counsel.

(b) At or before the conclusion of the matter, the youth and the youth’s counsel should be entitled to a copy of any document in the court file, as well as a verbatim transcript or recording of any relevant hearing.

PART X: RECORDS EXPUNGEMENT

STANDARD 10.1 EXPUNGEMENT OF JUVENILE AND FAMILY COURT RECORDS

(a) Expungement of delinquency records should require the complete deletion of records from all files and databases in all courts as well as any agency that obtained the records from the juvenile justice system.

(b) Youth entitled to expungement of delinquency records should retain that right even when the youth is under the jurisdiction of other youth-serving agencies or systems.

(c) The juvenile court should establish procedures to ensure effective notification to other youth-serving agencies and systems that a youth’s delinquency records should be expunged.

(d) In jurisdictions where the juvenile court or law enforcement agency is required to notify a youth’s school of an arrest, adjudication, or disposition, the juvenile court should also be required to notify the school when any juvenile court record has been expunged, and the school should be required to destroy its records relating to any expunged matter.

PART XI: RESPONSIBILITIES OF PROSECUTING ATTORNEYS

STANDARD 11.1 POLICIES AND PROTOCOLS

(a) Prosecutors should develop policies to guide intake decisions involving dual-status youth. Such policies should encourage diversion or non-intervention for youth who engage in minor delinquent behavior and who can obtain appropriate services from other youth-serving agencies and systems.

(b) Prosecutors should, in conjunction with state and local law enforcement officers and youth-serving agencies, develop policies governing referrals to the juvenile justice system.
from other youth-serving agencies and systems. Such policies should seek to reduce referrals to the juvenile justice system for minor delinquent behavior.

**STANDARD 11.2 TRAINING**

Prosecutors should participate in cross-system training as set forth in Standard 2.15 of these standards concerning the Need for Cross-System Training.

**STANDARD 11.3 CHARGING DECISIONS**

(a) Consistent with Standard 2.11 of these standards concerning Information Sharing, when youth are referred to the juvenile justice system, prosecutors should review available Family Court records to determine whether the youth or the youth’s family is or has been served by other youth-serving systems.

(b) The prosecutor should not file a delinquency petition:
   i. when the alleged delinquent behavior is minor and the youth can obtain appropriate services from other agencies;
   ii. when it is clear that the youth did not have the mental capacity, cognitive ability, or intent necessary to be held responsible for his behavior; or
   iii. to secure services or placement for a youth when a delinquency charge would not otherwise be warranted,

(c) The prosecutor should not prosecute delinquent behavior in juvenile or criminal court when the prosecutor determines that the purposes of the delinquency process can be accomplished outside of the juvenile or criminal justice system.

(d) The prosecutor should make every effort to ensure that a delinquency petition will not result in the termination or disruption of appropriate services for the youth from other youth-serving systems. The prosecutor should discourage other government attorneys handling dependency cases from closing dependency proceedings just because a delinquency petition is filed.

**STANDARD 11.4 COMMUNICATING WITH VICTIMS**

The prosecutor should advise victims, to the extent required by law or permitted under confidentiality laws or rules, of circumstances involving dual-status youth that lead to specific charging decisions and proposed resolutions. The prosecutor should advise victims of statutory, rule or other limitations on disclosure of information about the accused youth.

**STANDARD 11.5 DIVERSION**

(a) The prosecutor should consider information regarding the youth’s access to services from the child welfare system when deciding whether to divert a youth from the juvenile justice system.
(b) If the prosecutor decides to divert a dual-status youth from the juvenile justice system, the prosecutor should:

i. refer the youth to a program suitable for the youth’s age, ethnicity, culture, gender or sexual identification, disability, and developmental or cognitive ability; and

ii. consider diversion programs that allow the youth to participate in community service in lieu of a delinquency petition.

STANDARD 11.6 DETENTION

(a) In deciding whether to request detention of an accused youth, the prosecutor should:

i. not seek detention for alleged minor delinquent behavior; and

ii. consider whether other youth-serving agencies outside the juvenile justice system can protect the youth and serve public safety.

(b) The prosecutor should not seek detention just because no suitable child welfare placement has been identified.

(c) The prosecutor should not seek detention when detention will likely cause the youth to lose placement or services from other youth-serving systems and public safety can be served without detention.

STANDARD 11.7 COMMUNICATING AND COORDINATING WITH YOUTH-SERVING AGENCIES

(a) If the prosecutor declines to file a delinquency petition, the prosecutor should communicate that decision to any referring agency.

(b) The prosecutor should develop policies to govern the effective referral of youth to the child welfare system and other youth-serving agencies.

STANDARD 11.8 DISPOSITION AND POST-DISPOSITION PLANNING

(a) The prosecutor should participate in placement, re-entry, and disposition planning team meetings consistent with Standard 7.2 of these standards concerning the Disposition Process.

(b) The prosecutor should not seek an out-of-home placement when the youth’s supervision and service needs can be met in the community.

(c) After disposition, the prosecutors should periodically review the case.

i. If it appears that additional or alternate services are needed to meet the needs of the youth or to ensure public safety, the prosecutor may seek to modify the dispositional plan as described above.

ii. If it appears that the youth no longer needs care and rehabilitation from the juvenile court and does not pose a risk to public safety, the prosecutor should file a request to terminate the delinquency disposition early.
PART XII: RESPONSIBILITIES OF DEFENSE COUNSEL

STANDARD 12.1 ETHICAL OBLIGATIONS OF DEFENSE COUNSEL

(a) Defense counsel representing dual-status youth should abide by all applicable professional and ethical obligations for defense counsel generally.

STANDARD 12.2 TRAINING

Defense counsel should participate in cross-system training consistent with Standard 2.13 of these standards concerning Access to Court Records.

STANDARD 12.3 INVESTIGATION AND CONFIDENTIALITY WAIVERS

(a) Consistent with Standard 2.14 of these standards concerning Waivers of Confidentiality, defense counsel and dependency counsel should advise the youth in age-appropriate language, and when permitted and appropriate, inform the youth’s parent or guardian, about the need for a signed waiver to allow counsel access to child welfare records and the implications of such waiver. Youth, parents, or guardians with disabilities should receive accommodations necessary to provide informed consent to the waiver.

   i. The juvenile justice system should provide, and defense counsel should obtain, necessary interpretive services. Defense counsel should ensure that any written waiver form and other documents are appropriately translated.

   ii. When the youth is developmentally or cognitively limited or limited in his or her literacy skills, counsel should explain and obtain the waiver in a manner the youth can best understand.

(b) Defense counsel should gather and review all information that would likely affect the youth’s custody, legal status, or services in the juvenile justice system.

STANDARD 12.4 PRE-PETITION ADVOCACY BY DELINQUENCY COUNSEL

(a) Defense counsel should advise the youth regarding the possibility of initiating a referral from the juvenile justice system to the child welfare system and the possible implications of such a referral.

(b) Defense counsel should provide decision-makers all relevant information militating against, and advocate against, the filing of a delinquency petition and the inclusion of particular charges in a petition with the youth’s voluntary and informed consent. Defense counsel should consider and recommend alternatives to provide needed services for the youth and, if necessary, to protect the public.

(c) Defense counsel should communicate with the youth’s dependency counsel and the youth’s best interest advocate when the youth consents and such communication would not undermine the youth’s rights in the delinquency case.
STANDARD 12.5 ADVOCACY AT DETENTION HEARING

(a) In and before a detention hearing, defense counsel should present facts and arguments to support placement in the community or in the custody of youth-serving agencies, if consistent with the youth’s objectives. Facts and arguments should include evidence from youth-serving agencies regarding the availability of specific placements or services.

(b) If the youth is detained or sent to another out-of-home placement, defense counsel should advocate for comparable or better education, physical or behavioral health, and other services than the youth had been receiving prior to the placement.

(c) If the youth is ordered detained, defense counsel should, as soon as possible provide detention or shelter care staff with information about the youth’s needs and advocate for the proper care and safety of the youth.

STANDARD 12.6 DISPOSITION ADVOCACY

(a) Defense counsel representing dual-status youth should zealously advocate for the youth’s stated objectives at all stages, including any multi-agency planning team meeting or disposition hearing.

(b) Counsel should protect the youth’s due process interests, including in cases when the disposition hearing is consolidated with other Family Court proceedings.

(c) If necessary to advance the youth’s objectives, counsel should challenge any evidence or reports submitted to the juvenile court at the disposition hearing, including items submitted by the multi-agency team.

STANDARD 12.7 POST-DISPOSITION ADVOCACY

(a) Defense counsel’s advocacy on behalf of dual-status youth should not end at the entry of a disposition order. Counsel should maintain contact with both the youth and the agency or agencies responsible for implementing the court’s order, and:

i. counsel the youth and inform the youth’s family concerning the order and its implementation;

ii. ensure the timely and appropriate implementation of the order; and

iii. ensure the youth’s rights are protected as the youth’s disposition is implemented.

(b) Defense counsel should monitor the implementation of the youth’s disposition order.

i. If it appears that additional or different services are needed to meet the needs of the youth, counsel should seek to modify the dispositional plan or order, as consistent with the youth’s stated interests.

ii. If it appears the youth no longer needs rehabilitative services from the juvenile court and does not pose a risk to public safety, defense counsel should seek to modify or terminate disposition early.
(c) Relevant government jurisdictions should ensure that defense counsel have the authority and funding to continue representation after disposition consistent with these standards.

**STANDARD 12.8 APPELLATE ADVOCACY**

(a) After adjudication and disposition, defense counsel should

i. explain to the youth the meaning and consequences of the court’s judgment and the youth’s right to appeal any delinquency disposition or other court orders;

ii. give the youth a professional judgment as to whether there are meritorious grounds for appeal and the probable results of an appeal; and

iii. explain to the youth the advantages and disadvantages of an appeal.

(b) Defense counsel should take whatever steps are necessary to protect the youth’s right to appeal any illegal disposition or other court order, as consistent with the youth’s stated objectives.

**PART XIII: RESPONSIBILITIES OF DETENTION AND RESIDENTIAL STAFF**

**STANDARD 13.1 POLICIES AND PROTOCOLS**

(a) Lawyers in the juvenile justice system should advocate for comparable or better treatment and services in juvenile detention settings than the youth would receive if allowed to remain in the community.

(b) Detention and residential facility staff should develop internal policies to eliminate barriers in detention to the provision of appropriate services to dual-status youth in detention. Such internal policies should, at a minimum:

i. ensure regular communication between detention and residential staff and child welfare and other youth-serving agencies and service providers with a legal obligation to the youth;

ii. ensure that youth are transported to and from provider appointments, if safety and flight risks can be managed during transport;

iii. develop or revise visitation policies to allow foster parents, guardians, family members, significant others, and representatives from the child welfare agencies and service providers to visit youth in detention; and

iv. provide private and appropriate physical space for youth to meet with foster parents, guardians, family members, significant others, and representatives from the child welfare agencies and service providers.
EXECUTIVE SUMMARY

1. Summary of the Resolution

This resolution adopts the ABA Criminal Justice Standards Relating to Dual Jurisdiction Youth.

2. Summary of the Issue that the Resolution Addresses

This resolution adopts the ABA Criminal Justice Standards Relating to Dual Jurisdiction Youth, creating standards to address the unique situations for juveniles caught in two court systems at the same time, and provide guidance for judges, prosecutors, defense attorneys and other personnel as to best practices in these situations.

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

The resolution adopts the standards as ABA policy, allowing the standards to be used as training and guides for practitioners, and for lobbying efforts or in amicus briefs.

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

None.
AMERICAN BAR ASSOCIATION

Fourth Edition of the

CRIMINAL JUSTICE STANDARDS

for the

PROSECUTION FUNCTION

PART I.

GENERAL STANDARDS

Standard 3-1.1 The Scope and Function of These Standards

(a) As used in these standards, “prosecutor” means any attorney, regardless of agency, title, or full or part-time assignment, who acts as an attorney to investigate or prosecute criminal cases or who provides legal advice regarding a criminal matter to government lawyers, agents, or offices participating in the investigation or prosecution of criminal cases. These Standards are intended to apply in any context in which a lawyer would reasonably understand that a criminal prosecution could result. The burden to justify any exception should rest with the lawyer seeking it.

(b) These Standards are intended to provide guidance for the professional conduct and performance of prosecutors. They are written and intended to be entirely consistent with the ABA’s Model Rules of Professional Conduct, and are not intended to modify a prosecutor’s obligations under applicable rules, statutes, or the constitution. They are aspirational or describe “best practices,” and are not intended to serve as the basis for the imposition of professional discipline, to create substantive or procedural rights for accused or convicted persons, to create a standard of care for civil liability, or to serve as a predicate for a motion to suppress evidence or dismiss a charge. For purposes of consistency, these Standards sometimes include language taken from the Model Rules of Professional Conduct; but the Standards often address conduct or provide details beyond that governed by the Model Rules of Professional Conduct. No inconsistency is ever intended; and in any case a lawyer should always read and comply with the rules of professional conduct and other authorities that are binding in the specific jurisdiction or matter, including choice of law principles that may regulate the lawyer’s ethical conduct.

(c) Because the Standards for Criminal Justice are aspirational, the words “should” or “should not” are used in these Standards, rather than mandatory phrases such as “shall” or “shall not,” to describe the conduct of lawyers that is expected or recommended under these Standards. The Standards are not intended to suggest any lesser standard of conduct than may be required by applicable mandatory rules, statutes, or other binding authorities.

(d) These Standards are intended to address the performance of prosecutors in all stages of their professional work. Other ABA Criminal Justice Standards should also be consulted for more detailed consideration of the performance of prosecutors in specific areas.

Standard 3-1.2 Functions and Duties of the Prosecutor

(a) The prosecutor is an administrator of justice, a zealous advocate, and an officer of the court. The prosecutor’s office should exercise sound discretion and independent judgment in the performance of the prosecution function.
(b) The primary duty of the prosecutor is to seek justice within the bounds of the law, not merely to convict. The prosecutor serves the public interest and should act with integrity and balanced judgment to increase public safety both by pursuing appropriate criminal charges of appropriate severity, and by exercising discretion to not pursue criminal charges in appropriate circumstances. The prosecutor should seek to protect the innocent and convict the guilty, consider the interests of victims and witnesses, and respect the constitutional and legal rights of all persons, including suspects and defendants.

(c) The prosecutor should know and abide by the standards of professional conduct as expressed in applicable law and ethical codes and opinions in the applicable jurisdiction. The prosecutor should avoid an appearance of impropriety in performing the prosecution function. A prosecutor should seek out, and the prosecutor’s office should provide, supervisory advice and ethical guidance when the proper course of prosecutorial conduct seems unclear. A prosecutor who disagrees with a governing ethical rule should seek its change if appropriate, and directly challenge it if necessary, but should comply with it unless relieved by court order.

(d) The prosecutor should make use of ethical guidance offered by existing organizations, and should seek to establish and make use of an ethics advisory group akin to that described in Defense Function Standard 4-1.11.

(e) The prosecutor should be knowledgeable about, consider, and where appropriate develop or assist in developing alternatives to prosecution or conviction that may be applicable in individual cases or classes of cases. The prosecutor’s office should be available to assist other groups in the community efforts in addressing problems that lead to, or result from, criminal activity or perceived flaws in the criminal justice system.

(f) The prosecutor is not merely a case-processor but also a problem-solver responsible for considering broad goals of the criminal justice system. The prosecutor should seek to reform and improve the administration of criminal justice, and when inadequacies or injustices in the substantive or procedural law come to the prosecutor's attention, the prosecutor should stimulate and support efforts for remedial action. The prosecutor should provide services to the community, including involvement in public service and Bar activities, public education, community service activities, and Bar leadership positions. A prosecutorial office should support such activities, and the office’s budget should include funding and paid release time for such activities.

…

Standard 3-1.4 The Prosecutor’s Heightened Duty of Candor

(a) In light of the prosecutor’s public responsibilities, broad authority and discretion, the prosecutor has a heightened duty of candor to the courts and in fulfilling other professional obligations. However, the prosecutor should be circumspect in publicly commenting on specific cases or aspects of the business of the office.

(b) The prosecutor should not make a statement of fact or law, or offer evidence, that the prosecutor does not reasonably believe to be true, to a court, lawyer, witness, or third party, except for lawfully authorized investigative purposes. In addition, while seeking to accommodate legitimate confidentiality, safety or security concerns, a prosecutor should correct a prosecutor’s representation of material fact or law that the prosecutor reasonably believes is, or
later learns was, false, and should disclose a material fact or facts when necessary to avoid
assisting a fraudulent or criminal act or to avoid misleading a judge or factfinder.

(c) The prosecutor should disclose to a court legal authority in the controlling jurisdiction
known to the prosecutor to be directly adverse to the prosecution’s position and not disclosed by
others.

…

Standard 3-1.7 Conflicts of Interest

(a) The prosecutor should know and abide by the ethical rules regarding conflicts of interest
that apply in the jurisdiction, and be sensitive to facts that may raise conflict issues. When a
conflict requiring recusal exists and is non-waivable, or informed consent has not been obtained,
the prosecutor should recuse from further participation in the matter. The office should not go
forward until a non-conflicted prosecutor, or an adequate waiver, is in place, or a court orders
continued representation.

(b) The prosecutor should not represent a defendant in criminal proceedings in the
prosecutor’s jurisdiction.

(c) The prosecutor should not participate in a matter in which the prosecutor previously
participated, personally and substantially, as a non-prosecutor, unless the appropriate
government office, and when necessary a former client, gives informed consent confirmed in
writing.

(d) The prosecutor should not be involved in the prosecution of a former client. A prosecutor
who has formerly represented a client should not use information obtained from that
representation to the disadvantage of the former client, unless the information has become
generally known or the ethical obligations of confidentiality and loyalty otherwise do not apply.

(e) Except as law may otherwise permit. The prosecutor should not negotiate to employ any
person who is significantly involved as an attorney for, or employee or agent of, the defense
counsel in a matter in which the prosecutor is participating personally and substantially. The
prosecutor should not negotiate for private employment with an accused or the target of an
investigation, in a matter in which the prosecutor is participating personally and substantially, or
with an attorney or agent for such accused or target.

(f) The prosecutor should not permit the prosecutor’s professional judgment or obligations to
be affected by the prosecutor’s personal, political, financial, professional, business, property, or
other interests or relationships. A prosecutor should not allow interests in personal advancement
or aggrandizement to affect judgments regarding what is in the best interests of justice in any
case.

(g) The prosecutor should disclose to appropriate supervisory personnel at the earliest feasible
opportunity any facts or interests that could reasonably be viewed as raising a potential conflict
of interest. If it is determined that the prosecutor should nevertheless continue to act in the
matter, the prosecutor and supervisors should consider whether any disclosure to a court or
defense counsel should be made, and make such disclosure if appropriate. Close cases should be
resolved in favor of disclosure to the court and the defense.
(h) The prosecutor whose current relationship to another lawyer is parent, child, sibling, spouse or sexual partner should not participate in the prosecution of a person who the prosecutor knows is represented by the other lawyer. A prosecutor who has a significant personal, political, financial, professional, business, property, or other relationship with another lawyer should not participate in the prosecution of a person who is represented by the other lawyer, unless the relationship is disclosed to the prosecutor’s supervisor and supervisory approval is given, or unless there is no other prosecutor who can be authorized to act in the prosecutor's stead. In the latter rare case, full disclosure should be made to the defense and to the court.

(i) The prosecutor should not recommend the services of particular defense counsel to accused persons or witnesses in cases being handled by the prosecutor’s office. If requested to make such a recommendation, the prosecutor should consider instead referring the person to the public defender, or to a panel of available criminal defense attorneys such as a bar association lawyer-referral service, or to the court. In the rare case where a specific recommendation is made by the prosecutor, the recommendation should be to an independent and competent attorney, and the prosecutor should not make a referral that embodies, creates or is likely to create a conflict of interest. A prosecutor should not comment negatively upon the reputation or abilities of a defense counsel to an accused person or witness who is seeking counsel in a case being handled by the prosecutor’s office.

(j) The prosecutor should promptly report to a supervisor all but the most obviously frivolous misconduct allegations made, publicly or privately, against the prosecutor. If a supervisor or judge initially determines that an allegation is serious enough to warrant official investigation, reasonable measures, including possible recusal, should be instituted to ensure that the prosecution function is fairly and effectively carried out. A mere allegation of misconduct is not a sufficient basis for prosecutorial recusal, and should not deter a prosecutor from attending to the prosecutor’s duties.

Remainder of Standards are unchanged.
AMERICAN BAR ASSOCIATION

Fourth Edition of the
CRIMINAL JUSTICE STANDARDS
for the
DEFENSE FUNCTION

PART I
GENERAL STANDARDS

Standard 4-1.1 The Scope and Function of these Standards

(a) As used in these Standards, “defense counsel” means any attorney – including privately
retained, assigned by the court, acting pro bono or serving indigent defendants in a legal aid or
public defender’s office – who acts as an attorney on behalf of a client being investigated or
prosecuted for alleged criminal conduct, or a client seeking legal advice regarding a potential,
going or past criminal matter or subpoena, including as a witness. These Standards are
intended to apply in any context in which a lawyer would reasonably understand that a criminal
prosecution could result. The Standards are intended to apply in any context in which a lawyer
would reasonably understand that a criminal prosecution could result. The Standards are
intended to serve the best interests of clients, and should not be relied upon to justify any
decision that is counter to the client’s best interests. The burden to justify any exception should
rest with the lawyer seeking it.

(b) These Standards are intended to provide guidance for the professional conduct and
performance of defense counsel. They are written and intended to be entirely consistent with the
ABA’s Model Rules of Professional Conduct, and are not intended to modify a defense
attorney’s obligations under applicable rules, statutes or the constitution. They are aspirational
or describe “best practices,” and are not intended to serve as the basis for the imposition of
professional discipline, to create substantive or procedural rights for clients, or to create a
standard of care for civil liability. They may be relevant in judicial evaluation of constitutional
claims regarding the right to counsel. For purposes of consistency, these Standards sometimes
include language taken from the Model Rules of Professional Conduct; but the Standards often
address conduct or provide details beyond that governed by the Model Rules of Professional
Conduct. No inconsistency is ever intended; and in any case a lawyer should always read and
comply with the rules of professional conduct and other authorities that are binding in the
specific jurisdiction or matter, including choice of law principles that may regulate the lawyer’s
ethical conduct.

(c) Because the Standards for Criminal Justice are aspirational, the words “should” or “should
not” are used in these Standards, rather than mandatory phrases such as “shall” or “shall not,” to
describe the conduct of lawyers that is expected or recommended under these Standards. The
Standards are not intended to suggest any lesser standard of conduct than may be required by
applicable mandatory rules, statutes, or other binding authorities.

(d) These Standards are intended to address the performance of criminal defense counsel in
all stages of their professional work. Other ABA Criminal Justice Standards should also be
consulted for more detailed consideration of the performance of criminal defense counsel in specific areas.

Standard 4-1.2 Functions and Duties of Defense Counsel

(a) Defense counsel is essential to the administration of criminal justice. A court properly constituted to hear a criminal case should be viewed as an entity consisting of the court (including judge, jury, and other court personnel), counsel for the prosecution, and counsel for the defense.

(b) Defense counsel have the difficult task of serving both as officers of the court and as loyal and zealous advocates for their clients. The primary duties that defense counsel owe to their clients, to the administration of justice, and as officers of the court, are to serve as their clients’ counselor and advocate with courage and devotion; to ensure that constitutional and other legal rights of their clients are protected; and to render effective, high-quality legal representation with integrity.

(c) Defense counsel should know and abide by the standards of professional conduct as expressed in applicable law and ethical codes and opinions in the applicable jurisdiction. Defense counsel should seek out supervisory advice when available, and defense counsel organizations as well as others should provide ethical guidance when the proper course of conduct seems unclear. Defense counsel who disagrees with a governing ethical rule should seek its change if appropriate, and directly challenge it if necessary, but should comply with it unless relieved by court order.

(d) Defense counsel is the client’s professional representative, not the client’s alter-ego. Defense counsel should act zealously within the bounds of the law and standards on behalf of their clients, but has no duty to, and may not, execute any directive of the client which violates the law or such standards. In representing a client, defense counsel may engage in a good faith challenge to the validity of such laws or standards if done openly.

(e) Defense counsel should seek to reform and improve the administration of criminal justice. When inadequacies or injustices in the substantive or procedural law come to defense counsel’s attention, counsel should stimulate and support efforts for remedial action. Defense counsel should provide services to the community, including involvement in public service and Bar activities, public education, community service activities, and Bar leadership positions. A public defense organization should support such activities, and the office’s budget should include funding and paid release time for such activities.

(f) Defense counsel should be knowledgeable about, and consider, and where appropriate develop or assist in developing alternatives to prosecution or conviction that may be applicable in individual cases, and communicate them to the client. Defense counsel should be available to assist other groups in the community in addressing problems that lead to, or result from, criminal activity or perceived flaws in the criminal justice system.

(g) Because the death penalty differs from other criminal penalties, defense counsel in a capital case should make extraordinary efforts on behalf of the accused and, more specifically, review and comply with the ABA Guidelines for the Appointment and Performance of Defense Counsel in Death Penalty Cases.

…
Standard 4-1.4  Defense Counsel’s Tempered Duty of Candor

(a) In light of criminal defense counsel’s constitutionally recognized role in the criminal process, defense counsel’s duty of candor may be tempered by competing ethical and constitutional obligations. Defense counsel must act zealously within the bounds of the law and applicable rules to protect the client’s confidences and the unique liberty interests that are at stake in criminal prosecution.

(b) Defense counsel should not knowingly make a false statement of fact or law or offer false evidence, to a court, lawyer, witnesses, or third party. It is not a false statement for defense counsel to suggest inferences that may reasonably be drawn from the evidence. In addition, while acting-seeking to accommodate legitimate confidentiality, privilege, or other defense concerns, defense counsel should correct a defense representation of material fact or law that defense counsel knows is, or later learns was, false.

(c) Defense counsel should disclose to a court legal authority in the controlling jurisdiction known to defense counsel to be directly adverse to the position of the client and not disclosed by others.

Standard 4-1.7  Conflicts of Interest

(a) Defense counsel should know and abide by the ethical rules regarding conflicts of interest that apply in the jurisdiction, and be sensitive to facts that may raise conflict issues. When a conflict requiring withdrawal exists and is non-waivable, or informed consent has not been obtained, defense counsel should decline to proceed further, or take only minimal actions necessary to protect the client’s interests, until an adequate waiver or new counsel is in place, or a court orders continued representation.

(b) Defense counsel should not permit their professional judgment or obligations regarding the representation of a client to be adversely affected by loyalties or obligations to other, former, or potential clients; by client obligations of their law partners; or by their personal political, financial, business, property, or other interests or relationships.

(c) Defense counsel should disclose to the client at the earliest feasible opportunity any information, including any interest in or connection to the matter or to other persons involved in the matter, that would reasonably be relevant to the client’s selection of unconflicted counsel or decision to continue counsel’s representation. The disclosure of conflicts of interest that would otherwise be prohibited by applicable rules or law should be in writing, and should be disclosed on the record to any court that the matter comes before. Disclosures to the client should include communication of information sufficient to permit the client to appreciate the material risks involved and available alternatives. Defense counsel should obtain informed consent from a client before proceeding with any representation where an actual or realistically potential conflict is present.

(d) Except where necessary to secure counsel for preliminary matters such as initial hearings or applications for bail, a defense counsel (or multiple counsel associated in practice) should not undertake to represent more than one client in the same criminal case. When there is not yet a
criminal case, such multiple representation should be engaged in only when, after careful
investigation and consideration, it is clear either that no conflict is likely to develop at any stage
of the matter, or that multiple representation will be advantageous to each of the clients
represented and that foreseeable conflicts can be waived.

(e) In instances of permissible multiple representation:

(i) the clients should be fully advised that the lawyer may be unable to continue if a conflict
develops, and that confidentiality may not exist between the clients;

(ii) informed written consent should be obtained from each of the clients, and

(iii) if the matter is before a tribunal, such consent should be made on the record with
appropriate inquiries by counsel and the court.

(f) Defense counsel who has formerly represented a client should not thereafter use
information obtained from that former representation to the disadvantage of the former client,
unless the information has become generally known or the ethical obligations of confidentiality
and loyalty otherwise do not apply, and should not take legal positions that are substantially
adverse to a former client.

(g) In accepting payment of fees by one person for the representation of another, defense
counsel should explain to the payor that counsel’s loyalty and confidentiality obligations are
owed entirely to the person being represented and not to the payor, and that counsel may not
release client information to the payor unless applicable ethics rules allow. Defense counsel
should not permit a person who recommends, employs, or pays defense counsel to render legal
services for another to direct or regulate counsel’s professional judgment in rendering such legal
services. In addition, defense counsel should not accept such third-party compensation unless:

(i) the client gives informed consent after full disclosure and explanation;

(ii) defense counsel is confident there will be no interference with defense counsel’s
independence or professional judgment or with the client-lawyer relationship; and

(iii) defense counsel is reasonably confident that information relating to the representation
of the client will be protected from disclosure as required by counsel’s ethical duty of
confidentiality.

(h) Defense counsel should not represent a client in a criminal matter in which counsel, or
counsel’s partner or other lawyer in counsel’s law office or firm, is the prosecutor in the same or
a substantially related matter, or is a prosecutor in the same jurisdiction.

(i) If defense counsel’s partner or other lawyer in counsel’s law office was formerly a
prosecutor in the same or substantially related matter or was a prosecutor in the same
jurisdiction, defense counsel should not take on representation in that matter unless appropriate
screening and consent measures under applicable ethics rules are undertaken, and no confidential
information of the client or of the government has actually been exchanged between defense
counsel and the former prosecutor.

(j) If defense counsel is a candidate for a position, or seeking employment, as a prosecutor or
judge, this should be promptly disclosed to the client, and informed consent to continue be
obtained.
(k) Defense counsel who formerly participated personally and substantially in the prosecution or criminal investigation of a defendant should not thereafter represent any person in the same or a substantially related matter, unless waiver is obtained from both the client and the government. Defense counsel who acquired confidential information about a person when counsel was formerly a prosecutor should not use such information in the representation of a client whose interests are adverse to that other person, unless the information has become generally known or the ethical obligations of confidentiality and loyalty otherwise do not apply.

(l) Defense counsel whose current relationship to a prosecutor is parent, child, sibling, spouse, or sexual partner should not represent a client in a criminal matter in which defense counsel knows the government is represented by that prosecutor. Nor should defense counsel who has a significant personal or financial relationship with a prosecutor represent a client in a criminal matter in which defense counsel knows the government is represented in the matter by such prosecutor, except upon informed consent by the client regarding the relationship.

(m) Defense counsel should not act as surety on a bond either for a client whom counsel represents or for any other client in the same or a related case, unless it is required by law or it is clear that there is no risk that counsel’s judgment could be materially limited by counsel’s interest in recovering the amount ensured.

(n) Except as law may otherwise permit, defense counsel should not negotiate to employ any person who is significantly involved as an attorney, employee, or agent of the prosecution in a matter in which defense counsel is participating personally and substantially. Defense counsel should not negotiate for employment with prosecutors involved in a matter in which defense counsel’s client is the defendant or the target of an investigation and in which defense counsel is participating personally and substantially.

Remainder of Standards are unchanged.
EXECUTIVE SUMMARY

1. Summary of the Resolution

This resolution makes harmonizing edits and revisions to the *ABA Standards for Criminal Justice: Prosecution Function, 4th Edition*, and *ABA Standards for Defense Function, 4th Edition* involving small word or phrasing differences between Standards that were intended to be parallel. No substantive differences are envisioned or intended.

2. Summary of the Issue that the Resolution Addresses

This resolution adopts edits and revisions to places in the *ABA Standards for Criminal Justice: Prosecution Function, 4th Edition*, and *ABA Standards for Defense Function, 4th Edition* that, at the drafting stage, were intended to be parallel, but the final version adopted by the House of Delegates still required wordsmithing.

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

By adopting the proposed changes, the standards will reflect the intention of the drafters to have parallel provisions in certain provisions of the standards. These standards will be used in training programs and literature to provide guidance to prosecutors, defense attorneys, and judges in the performance of their duties in the criminal justice section. The standards will also continue to be used in lobbying efforts, and in amicus briefs.

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 governments to adopt policies and procedures that:

1. favor release of defendants upon their own recognizance or unsecured bond;
2. require that a court determine that release on cash bail or secured bond is necessary to assure the defendant’s appearance and no other conditions will suffice for that purpose before requiring such bail or bond;
3. prohibit a judicial officer from imposing a financial condition of release that results in the pretrial detention of a defendant solely due to the defendant’s inability to pay;
4. permit a court to order a defendant to be held without bail where public safety warrants pretrial detention and no conditions of pretrial release suffice, and require that the court state on the record the reasons for detention; and
5. bar the use of “bail schedules” that consider only the nature of the charged offense, and require instead that courts make bail and release determinations based upon individualized, evidence-based assessments that use objective verifiable release criteria that do not have a discriminatory or disparate impact based on race, ethnicity, religion, socio-economic status, or sexual or gender identification.
EXECUTIVE SUMMARY

1. Summary of the Resolution

This resolution calls for the adoption of policies and procedures that: favor release on personal recognizance bonds or unsecured bonds; that permit cash bonds or secured bonds only upon a determination by the court that such financial conditions and no other conditions will assure appearance; and that pretrial detention should never occur due solely to an inability to pay. The resolution also calls for detention without bail under certain conditions, requires the use of individualized, evidence-based assessments that have been shown to have no discriminatory impact in detention decisions, and rejects the use of ‘bail schedules’ based on the pending charge.

2. Summary of the Issue that the Resolution Addresses

The detention of individuals before trial due solely to an inability to pay has reached unmanageable proportions. According to the latest statistics available, approximately two-thirds of people in jail are awaiting trial, and research has shown that many of these people are low-risk individuals who could be returned safely to their jobs, families and communities, either on personal recognizance bond or unsecured bond, with the expectation that they will return to court. Meanwhile, for the individuals whose profiles suggest that they cannot be reasonably managed in the community, money bail still allows the possibility that they can be released.

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

The resolution affirms and highlights the ABA’s position on many critical issues regarding pretrial release and detention. As states and localities seek to revise their bail policies and practices, this resolution will help guide their decisions and provide evidence that these positions are widely accepted and recognized in the legal community.

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
governments to adopt laws and policies with respect to pretrial release in juvenile cases that:

(1) prohibit the use of financial conditions or collateral for release in any form;

(2) use objective verifiable criteria that does not have a discriminatory or disparate impact based on race, ethnicity, religion, disability, sexual orientation or gender identification; and

(3) use the least restrictive conditions of release that protect the public safety and assure likelihood of appearance in court.
EXECUTIVE SUMMARY

1. Summary of the Resolution

This resolution urges all governmental entities to cease use of bail/bond in the juvenile justice system. The resolution urges governmental entities to utilize objective criteria that do not have a discriminatory or disparate impact based on race, ethnicity, religion, socio-economic status, or sexual or gender identification, and utilizes the least restrictive conditions of release.

2. Summary of the Issue that the Resolution Addresses

A number of states allow parents to post bail/bond for their children in the juvenile justice system. The result of this practice is that there is enormous inequity between those children and youth who are released from detention facilities and those who are not, based solely on the financial condition of families. The decision between detention and release should instead be based on objective criteria that minimize the danger of discrimination or disparate impact based on race, ethnicity, religion, socio-economic status, or sexual or gender identification, and the decision to release should include the least restrictive conditions of release.

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

The proposed policy will urge states to reconsider the use of cash bail or bond in these cases and pass legislation and policies to stop its use in the juvenile justice system.

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

None are known.
RESOLUTION

RESOLVED, That the American Bar Association urges federal, state, local, territorial and tribal legislative bodies and governmental agencies to enact laws and adopt policies prohibiting the use of solitary confinement of children and youth under age 18.
EXECUTIVE SUMMARY

1. Summary of the Resolution

This resolution urges all governmental entities to end the practice of solitary confinement against juveniles in all detention and post-adjudication facilities. Juvenile solitary confinement has many euphemisms, but it is defined as the involuntary placement of a child or youth alone in a cell, room, or other area for any reason other than as a temporary response to behavior that threatens immediate harm to the youth or others and ends when the threat is over and, in no case, more than 4 hours.

2. Summary of the Issue that the Resolution Addresses

Concern over the circumstances under which children and youth are held in locked facilities has been evident for years to the point where all three branches of government have weighed in on this issue and its deleterious impact on children and youth. Many feel 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 end this practice in all juvenile facilities.

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 governments to enact laws allowing individuals to petition to expunge all criminal justice records pertaining to charges or arrests that did not result in a conviction.
EXECUTIVE SUMMARY

1. **Summary of the Resolution**

This resolution calls for jurisdictions to allow individuals to petition courts, law enforcement, and other applicable criminal justice record keeping entities to expunge, or remove from public view, records pertaining to nonconvictions, including arrests, charges, dispositions of nolle prosequi and acquittals.

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

Expungement refers to removing criminal records from public view by petitioning the court. Expungement generally only refers to *charges*, not convictions. This resolution calls for jurisdictions to allow those individuals who do not have a criminal conviction but nevertheless have a public record of criminal justice events to expunge that record, allowing them to obtain housing and employment they may not have previously been able to obtain.

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

This resolution calls for jurisdictions to allow those individuals who have a public record of criminal justice events to expunge that record, allowing them to obtain housing and employment they may not have previously been able to obtain.

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

This resolution is the result of extensive debate and discussion by the ABA Criminal Justice Council (a balanced mix of prosecutors, defense attorneys, judges and others). The primary concern is providing prosecutors and law enforcement access to records that may show a pattern of criminal behavior, even if none of the arrests or charges resulted in convictions. However, the proposed resolution was approved by the council as it appeared to address the concerns raised at the meeting. Additionally, this resolution calls for the availability and accessibility of expungement procedures, with ultimate decision on expungement to be made on a case-by-case basis, which is usually done only with the approval and consent of the prosecutor’s office.
RESOLUTION

RESOLVED, That the American Bar Association urges federal, state, local, territorial and tribal governments to enact laws allowing for the expungement of: (a) convictions, or (b) other statutory ordinances or violations where a court enters a finding of guilt, for actions performed in public spaces that are associated with homelessness.
EXECUTIVE SUMMARY

1. Summary of the Resolution

This resolution also calls on jurisdictions to allow for the expungement of convictions for so-called “nuisance crimes” or life staining crimes such as public urination, loitering, and vagrancy.

2. Summary of the Issue that the Resolution Addresses

Expungement generally refers to removing criminal records from public view by petitioning the court. Expungement generally only refers to charges, not convictions. This resolution addresses expungement of convictions only for non-violent life sustaining crimes (sometimes referred to as nuisance crimes) including public urination, loitering and vagrancy.

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

The proposed policy will allow individuals convicted of life sustaining crimes such as public urination, loitering, and vagrancy to expunge convictions or violations for those offenses.

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 state, territorial, and tribal legislatures to amend their guardianship statutes to require that supported decision-making be identified and fully considered as a less restrictive alternative before guardianship is imposed; and urges courts to consider supported decision-making as a less restrictive alternative to guardianship; and

FURTHER RESOLVED, That the American Bar Association urges state, territorial, and tribal legislatures to amend their guardianship statutes to require that decision-making supports that would meet the individual’s needs be identified and fully considered in proceedings for termination of guardianship and restoration of rights; and urges all courts to consider available decision-making supports that would meet the individual’s needs as grounds for termination of a guardianship and restoration of rights.
EXECUTIVE SUMMARY

1. **Summary of the Resolution**
   This resolution urges state, territorial, and tribal legislatures to amend their guardianship statutes to require that supported decision-making be identified and fully considered as a less restrictive alternative before guardianship is imposed; and urges courts to consider supported decision-making as a less restrictive alternative to guardianship.

   This resolution further urges state, territorial, and tribal legislatures to amend their guardianship statutes to require that decision-making supports that would meet the individual’s needs be identified and fully considered in proceedings for termination of guardianship and restoration of rights; and urges all courts to consider available decision-making supports that would meet the individual’s needs as grounds for termination of a guardianship and restoration of rights.

   Supported decision-making is a process by which individuals with psychosocial disabilities, intellectual and developmental disabilities, and traumatic brain injury, as well as older individuals with cognitive limitations, choose a trusted person or persons to support them in making their own decisions and exercising their legal capacity. Supporters can be friends, family, professionals, advocates, peers, community members, or any other trusted person. They may gather and present relevant information; help the individual to understand and weigh decisions, including potential risks, options, and likely outcomes and consequences; communicate the decision to third parties such as health care professionals and financial institutions; and/or assist in implementing the decision.

2. **Summary of the Issue that the Resolution Addresses**
   The resolution addresses the following issue: Identification and consideration of supported decision-making as a less restrictive alternative to guardianship, as well as ground for termination of a guardianship and restoration of rights.

3. **Please Explain How the Proposed Policy Position will address the issue**
   This resolution will address this issue by urging (1) legislatures to amend their guardianship statutes to require that supported decision-making be identified and fully considered as a less restrictive alternative before guardianship is imposed, as well as in proceedings to terminate a guardianship and (2) courts to consider supported decision-making as a less restrictive alternative to guardianship, as well as grounds for termination of a guardianship.

4. **Summary of Minority Views or Opposition Internal and/or External to the ABA Which Have Been Identified**
   At this time, we are not aware of any opposition.
RESOLVED, That the American Bar Association favors an interpretation of Section 35(a) of the Lanham Act, 15 U.S.C. §1117(a), that proof of willfulness is not required, but may be taken into account as among the equitable considerations, for a prevailing plaintiff to recover a defendant’s profits in actions involving trademark infringement, unfair competition, or cyber-piracy under the Lanham Act, 15 U.S.C. §§ 1114, 1125(a), and 1125(d).
EXECUTIVE SUMMARY

1. Summary of the Resolution

The Resolution calls for the Association to adopt policy in support of an interpretation of Section 35(a) of the Lanham Act, 15 U.S.C. §1117(a), that proof of willfulness is not required, but may be taken into account as among the equitable considerations, for a prevailing plaintiff to recover a defendant’s profits in actions involving trademark infringement, unfair competition and/or cyber-piracy.

2. Summary of the Issue that the Resolution Addresses

In an action for trademark infringement, unfair competition or cyber-piracy under the Lanham Act, a prevailing plaintiff may be entitled to a disgorgement of defendant’s profits, as an equitable remedy. However, there is a split among the Circuits as to whether the prevailing plaintiff must establish a defendant’s willfulness to be awarded a disgorgement of defendant’s profits or whether a showing of willfulness is simply a factor considered by the court in fashioning such an equitable remedy. This Resolution seeks to resolve the Circuit split and establish a uniform rule that is based on statutory construction and does not undermine a court’s inherent and broad discretion when ordering the equitable remedy of an accounting.

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

The Resolution calls for the adoption of policy which supports an interpretation of the statute that willfulness is not required but may be considered by a court when determining whether a disgorgement of defendant’s profits is an appropriate equitable remedy. This Resolution would support an Association amicus brief with the Supreme Court of the United States in Romag Fasteners, Inc. v. Fossil, Inc., 817 F.3d 782 (Fed. Cir. 2016), cert. granted and vacated on other grounds, No. 16-202, 2017 WL 1114951 (U.S. Mar. 27, 2017) if either party in the case petitions the Supreme Court for additional review, or in a similar case raising this issue in light of the existing circuit split.

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

This Resolution is consistent with the approach adopted by the Third, Fourth, Fifth, Sixth, Seventh, and Eleventh Circuits. The Second Circuit has adopted a different view, namely that willfulness is a mandatory prerequisite to obtain the equitable remedy of disgorgement of defendant’s profits. This position has also been adopted by the Eighth, Ninth, Tenth and D.C. Circuits. The First Circuit has adopted a blended approach that requires a plaintiff to prove the defendant willfully violated the plaintiff’s rights only if the parties are not direct competitors.
RESOLVED, That the American Bar Association supports an interpretation of the novelty requirement of Section 102(a)(1) of the Patent Act such that only sales or offers to sell that make the invention accessible to the public prior to the filing of a patent application could prevent an inventor or patent owner from obtaining or maintaining a patent on that invention.
EXECUTIVE SUMMARY

1. **Summary of the Resolution**

The Resolution calls for the Association to adopt policy in support of a clarification of the patent laws and to support an interpretation of those laws such that a sale or an offer to sell a product or service embodying an invention must have made the invention “available to the public” to invalidate claims of a patent directed to that invention.

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

Prior to the enactment of the America Invents Act (AIA) in 2011, an inventor’s attempts to sell a product or service more than a year before the inventor filed a patent application would prevent the inventor from obtaining a patent, even if the inventor’s efforts to sell the product were made in secret and even if the sale did not make the invention known to others. When Congress enacted the AIA, it changed the U.S. patent system from one that based priority on which inventor was the first to invent, to one that based priority on which inventor filed first. Because the new priority system encouraged inventors to file quickly, Congress appears to have eliminated reliance on disclosures or activities not fully known to the public to invalidate claims of a patent or application—only public sales or offers to sell could be used to invalidate claims directed to an invention. But there is currently litigation over whether, in amending 35 U.S.C. § 102(a)(1) to include the language “otherwise available to the public,” Congress intended to limit reliance on sales and offers to sell to only those that were fully public or whether it intended to maintain the status quo.

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

The policy would provide authority for the ABA to express views to any appropriate and relevant policy-making body (judicial, legislative, or executive) in support of an interpretation of the patent laws that an invention is “on sale” under 35 U.S.C. § 102(a)(1) only when such sale or offer for sale was directed to an invention which was available to the public.

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

There are two views on interpretation of § 102(a)(1) with the “or otherwise available to the public” language added by Congress: the view expressed in the resolution and the approach taken by a three judge panel of the Federal Circuit, which held that an invention is made available to the public when there is a publicly disclosed commercial offer or contract to sell a product embodying the invention, regardless of whether members of the public were aware that the product sold actually embodies the claimed invention.
RESOLUTION

RESOLVED, That the American Bar Association supports, in a post issuance proceeding at the U.S. Patent and Trademark Office in which a previously issued patent is challenged by a petitioner, applying the statutory requirement that the petitioner asserting the unpatentability of a patent “shall have the burden of proving unpatentability by a preponderance of the evidence” on both the challenged claims and any amendment of the claims proposed by the patent owner during the proceeding.
EXECUTIVE SUMMARY

1. Summary of the Resolution

The Resolution calls for the Association to adopt policy in support of a clarification of the patent laws and to support an interpretation of those laws such that in a post-issuance proceeding at the U.S. Patent and Trademark Office (PTO) in which a previously issued patent is challenged by a third party, the PTO may not, as a condition of accepting new claims, require the patent owner to first demonstrate the patentability of the new claims.

2. Summary of the Issue that the Resolution Addresses

When Congress enacted the America Invents Act (AIA), it unequivocally specified that the petitioner, not the patent owner, “shall have the burden of proving a proposition of unpatentability by a preponderance of the evidence.” 35 U.S.C. §§ 316(e) and 326(e). Congress also chose to allow patent owners one opportunity to replace claims in their patent, as a matter of right, subject to three conditions none of which involved shifting the burden of persuasion on the issue of validity onto the patent owner. 35 U.S.C. §§ 316(d) and 326(d). Contrary to the plain language of §§ 316(e) and 326(e), the PTO established rules that require the patent owner to prove the patentability of proposed substitute claims presented with a motion to amend. The resolution is intended to address uncertainty and urge clarification of the appropriate burden of persuasion in the case of amended claims.

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

The policy would provide authority for the ABA to express views to any appropriate and relevant policy-making body (judicial, legislative, or executive) in support of an interpretation of the provisions of the AIA that authorizes patent owners one opportunity to replace claims in their patent, as a matter of right, subject to conditions that do not involve shifting the burden of persuasion on the issue of validity onto the patent owner.

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

The PTO’s view is that 35 U.S.C. §§ 316(a)(9) and 326(a)(9) Congress vests the PTO with the authority to prescribe regulations “setting forth standards and procedures for allowing the patent owner to move to amend the patent” in a post-issuance proceeding before the PTAB and, thereby, expressly authorized the PTO to require that the patent owner prove patentability of any proposed substitute claims presented.
RESOLVED, That the American Bar Association supports the appointment of counsel at federal government expense to represent all indigent persons in removal proceedings before the Executive Office for Immigration Review (in Immigration Courts and before the Board of Immigration Appeals), and if necessary to advise such individuals of their rights to appeal to the federal Circuit Courts of Appeals.

FURTHER RESOLVED, That unless and until the federal government provides counsel for all indigent persons in removal proceedings before the Executive Office for Immigration Review, the American Bar Association encourages state, local, territorial, and tribal governments to provide in removal proceedings legal counsel to all indigent persons in their jurisdictions who lack the financial means to hire private counsel and who lack pro bono counsel.

FURTHER RESOLVED, That the American Bar Association encourages federal, state, local, territorial, and tribal governments to prioritize government-funded counsel for detained individuals in removal proceedings.
EXECUTIVE SUMMARY

1. Summary of the Resolution

This resolution proposes a right to government appointed counsel at federal expense to indigent noncitizens in removal proceedings before the Department of Justice’s Executive Office for Immigration Review (EOIR), specifically before the Immigration Courts and the Board of Immigration Appeals (BIA). This resolution also seeks to ensure that noncitizens are aware of their rights to appeal their cases to the U.S. Circuit Courts of Appeal (if relevant). The ABA has taken an incremental approach in supporting an expanded right to appointed counsel at government expense for indigent individuals in civil proceedings, and this resolution is the next logical step.

2. Summary of the Issue that the Resolution Addresses

The right to counsel provided for by the Immigration and Nationality Act (INA) does not currently include a recognized right to appointed counsel at government expense for indigent respondents. The majority of individuals are ordered removed through summary, DHS-only proceedings, only a minority of individuals (approximately 35%), are placed in “regular” removal proceedings in immigration court pursuant to INA § 240. These are adversarial proceedings where the respondent is opposed by an experienced government attorney. Moreover, the immigration laws are extremely complex and subject to constantly changing agency interpretations and varied case law within the Board of Immigration Appeals and among the U.S. Circuit Courts of Appeals. Meanwhile, the immigration courts are extremely backlogged, demonstrated by the fact that at the end of January 2017, over 540,000 cases were pending. In a recent national study, only 37% of all immigrants in removal proceedings benefitted from legal representation. Many unrepresented individuals request multiple continuances in immigration court to seek counsel, yet ultimately represent themselves and are unable to successfully defend against removal or apply for relief to which they are legally entitled. As a consequence, the immigration system is bogged down and plagued with inefficiencies. Practically speaking, this lack of counsel results in great hardship to individuals with bone fide claims for relief. As a result, families are separated, U.S. citizen children lose loving parents, and in the most egregious situations, asylum seekers face violence and even death when unable to properly present a claim for protection.

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

The adoption of this policy would improve fairness within the immigration system, as well as enhance the efficiency with which the immigration judges and BIA members operate by making it easier to quickly identify respondents who qualify for legal relief and provide advice and counsel to those who do not qualify.

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

There are no minority views of which we are aware.
RESOLVED, That the American Bar Association urges courts to implement plans that welcome opportunities for new lawyers to gain meaningful courtroom experience, and urges law firms and clients to take advantage of those plans.
EXECUTIVE SUMMARY

1. Summary of the Resolution

The Resolution urges judges to encourage and facilitate the participation of young lawyers in courtroom proceedings.

2. Summary of the Issue that the Resolution Addresses

Young lawyers need courtroom experience to become mature professionals.

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

The Resolution draws attention to the need, and urges judges to facilitate the participation of young lawyers in courtroom proceedings.

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 all federal, state, local, tribal, and territorial governments to adopt and implement laws, policies, and other effective measures to provide every child with equal access to elementary and secondary public schools funded at levels adequate to ensure a high-quality education.
EXECUTIVE SUMMARY

1. Summary of the Resolution

The resolution urges all federal, state, local, tribal, and territorial governments to adopt and implement laws, policies, and other effective measures to assure every child equal access to high-quality, adequately funded elementary and secondary public education.

2. Summary of the Issue that the Resolution Addresses

The ABA recognizes that delivery of a high-quality education is a core imperative of government. Equal access is perhaps the easiest issue to measure because it turns on actual availability of opportunity at the student level to the same high quality education across relevant jurisdictions.

Moreover, the ABA has repeatedly enacted policies underscoring lawyers’ indispensable role in assuring every child’s right to a high-quality education. Through personal involvement and engagement in their local public schools, whether as interested members of the community or members of school boards, lawyers can use readily available data to determine whether their state and local school districts are delivering quality education. Lawyers can identify, measure, and evaluate gaps, help experts develop plans to close them, and advocate privately and publicly for the needed reforms and funding, and, where necessary, seek the assistance of the judiciary.

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

Through this resolution, the ABA will recognize that merely supporting a right to high quality education can be an empty promise without also ensuring that all children have access to adequately funded schools and other critical educational resources. The ABA’s existing policy and the resolution, taken together, will help to make high-quality education a reality.

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

No minority views or opposition have been identified.
RESOLVED, That the American Bar Association urges federal, state, local, territorial, and tribal
governments to develop and implement age-appropriate curricula designed to instill in all students
a sense of personal responsibility to cast informed votes and to teach them how to educate
themselves regarding candidates and issues in elections.
EXECUTIVE SUMMARY

1. Summary of the Resolution

The resolution urges federal, state, local, territorial, and tribal governments to develop and implement age-appropriate curricula designed to instill in all students a sense of personal responsibility to cast informed votes and to teach them how to educate themselves regarding candidates and issues in elections.

2. Summary of the Issue that the Resolution Addresses

The American Bar Association (ABA) has long encouraged measures to instill or enhance civics education in our schools, including public education about the justice system and rule of law in our society.

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

In the words of the Standing Committee on Public Education in its 1995 Recommendation and Report to the House of Delegates (#114), “The timeliness of such support is critical to a renewed commitment and understanding of the fundamental relationship between rights, responsibilities, and the rule of law in preparing young people for effective citizenship.” Twenty-two years later, we must take stronger, more targeted steps to ensuring our citizens receive the tools they need to actively and effectively fulfill their civic duty to vote in all elections. This Resolution will allow the ABA to advocate to do so.

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

No minority views or opposition have been identified.
RESOLVED, That the American Bar Association endorses the Blueprint for Change: Education Success for Children in Foster Care (2007) and the Blueprint for Change: Education Success for Youth in the Juvenile Justice System (2016) (collectively, the “Blueprints”), dated August 2017;

FURTHER RESOLVED, That the American Bar Association urges federal, state, territorial, tribal, and local legislatures, government agencies, and courts to adopt laws, regulations, policies, and court rules to implement the Blueprints;

FURTHER RESOLVED, That the American Bar Association urges attorneys, judges, and state, territorial, tribal, and local bar associations to support improvements in practices, program resources, and legal strategies to ensure educational stability and success consistent with the Blueprints.
BLUEPRINT FOR CHANGE: EDUCATION SUCCESS FOR CHILDREN IN FOSTER CARE

1. Youth are entitled to remain in their same school when feasible.

1-A Youth’s foster care placement decisions take school stability into account, and school stability is a priority whenever possible and in the child’s best interests.

1-B Youth have sufficient foster home and permanent living options available in their home communities to reduce the need for school moves.

1-C When in their best interests, youth have a legal right to remain in the same school (school of origin) even when they move outside the school district, and schools that retain children are not financially penalized.

1-D Youth are entitled to necessary transportation to their school of origin, with responsibilities clearly designated for transportation costs.

1-E Youth have necessary support and information to make school of origin decisions; youth, birth parents, caseworkers, foster parents, courts, attorneys, schools, and educators are trained about legal entitlements and appeal and dispute procedures.

1-F Youth with disabilities continue in an appropriate education setting, regardless of changes in foster care placements, and transportation is provided in accordance with the youth’s Individualized Education Program (IEP).

2. Youth are guaranteed seamless transitions between schools and school districts when school moves occur.

2-A Youth have a right to be enrolled immediately in a new school and to begin classes promptly.

2-B Youth can be enrolled in school by any person who has care or control of the child (i.e., caseworker or foster parent).

2-C Youth enrollment and delivery of appropriate services are not delayed due to school or record requirements (i.e., immunization records, birth certificates, school uniforms); designated child welfare, education, and court staff facilitate and coordinate transitions and receive training on special procedures.

2-D Youth education records are comprehensive and accurate, and promptly follow youth to any new school or placement; records are kept private and shared only with necessary individuals working with the youth.

2-E Youth who arrive in a new school during the school term are allowed to participate in all academic and extracurricular programs even if normal timelines have run or programs are full.

2-F Youth receive credit and partial credit for coursework completed at the prior school.

2-G Youth have the ability to receive a high school diploma even when they have attended multiple schools with varying graduation requirements.

2-H Eligible youth with disabilities receive the protections outlined in federal and state law, including timelines for evaluations, implementation of an Individualized Education Program (IEP) or an Individual Family Service Plan (IFSP), and placement in the least restrictive environment, even when they change school districts.

3. Young children enter school ready to learn.

3-A Young children have all the appropriate health interventions necessary, including enrollment in the Medical Assistance Early Periodic Screening, Diagnosis, and Treatment (EPSDT) Program, and receive comprehensive evaluations and treatment.

3-B Young children are given special prioritization and treatment in early childhood programs (including Head Start, Early Headstart, and preschool programs).

3-C Young children receive developmentally appropriate counseling and supports in their early childhood programs with sensitivity to their abuse and neglect experiences.

3-D Young children have caretakers who have been provided information on the children’s medical and developmental needs, and who have received training and support to be effective advocates.

3-E Children under age three with developmental delays, or a high probability of developing such delays, are identified as early as possible, promptly referred for evaluation for early intervention services, and promptly evaluated and served.

3-F Young children at high risk of developmental delays are screened appropriately and qualify for early intervention services whenever possible.

3-G Children under age three who have been involved in a substantiated case of child abuse and neglect, who have been identified as affected by substance abuse or withdrawal symptoms resulting from prenatal drug exposure, or who have experienced a substantiated case of trauma due to exposure to family violence are referred to the early intervention system for screening.

3-H Children with disabilities ages three to school age are referred and evaluated, and receive appropriate preschool early intervention programs.

4. Youth have the opportunity and support to fully participate in all aspects of the school experience.
4-A Youth are entitled and encouraged to participate in all aspects of the school experience, including academic programs, extracurricular activities, and social events, and are not excluded because of being in out-of-home care.

4-B Youth receive the additional supports necessary to be included in all aspects of the school experience.

4-C Youth’s records relating to his or her education and needs are made available to necessary individuals working with the youth, while respecting the youth’s privacy.

4-D Youth’s appointments and court appearances are scheduled to minimize their impact on the child’s education, and children are not penalized for school time or work missed because of court or child welfare case-related activities.

4-E Youth are not inappropriately placed in nonpublic schools or other alternative school settings, including schools for students with disabilities.

4-F Youth receive supports to improve performance on statewide achievement tests and other measures of academic success (such as attendance and graduation).

4-G Youth are surrounded by trained professionals that have the knowledge and skills to work with children who have experienced abuse and neglect; school curricula and programs utilize the research on trauma-informed care.

4-H Youth with disabilities are located, evaluated, and identified as eligible for special services.

4-I Youth with disabilities receive the special help they need to learn content appropriate to their grade level or, when that is not possible, the content that is appropriate to their learning level.

4-J Youth with disabilities receive their education in regular classrooms (with the necessary supports and accommodations) whenever possible.

5. Youth have supports to prevent school dropout, truancy, and disciplinary actions.

5-A Youth are not disproportionately subjected to school discipline or school exclusion, and are not placed in alternative schools for disruptive students as a means to address truancy or as a disciplinary measure.

5-B Youth have access to school counselors and other school staff familiar with the needs of children who have experienced abuse and neglect, and the staff has mastered effective remediation strategies.

5-C Youth have advocates at school disciplinary and other proceedings who are trained on procedures related to dropout, truancy, and discipline.

5-D Youth at risk of truancy or dropping out have access to programs and supports designed to engage them in school.
5-E Youth who have dropped out of school have access to programs and supports designed to reintegrate them into a school or a General Educational Development (GED) program.

5-F Youth with disabilities have behavior intervention plans in place to minimize inappropriate school behaviors and to reduce the need for disciplinary action or referral to the police.

5-G Youth with disabilities receive the procedural protections outlined in federal law so that they are not punished for behavior that is a symptom of their disability

6. Youth are involved and engaged in all aspects of their education and educational planning and are empowered to be advocates for their educational needs and pursuits.

6-A Youth are routinely asked about their educational preferences and needs, including their view on whether to change schools when their living situation changes.

6-B Youth receive training about their educational rights commensurate to their age and developmental abilities.

6-C Youth are given the opportunity to participate in court proceedings, and their engagement is supported with transportation and accommodations to decrease the impact on school attendance and schoolwork; attorneys, guardians ad litem, CASAs, and judges are trained on involving youth in court, and encourage youth participation.

6-D Youth participate in school and child welfare meetings and planning about their education and their future.

6-E Youth are surrounded by school and child welfare professionals with appropriate training and strategies to engage youth in education planning.

6-F Youth with disabilities actively participate in the special education process, especially in transition planning for post-school education and employment, and are provided with the supports necessary to effectively participate.

7. Youth have an adult who is invested in his or her education during and after his or her time in out-of-home care.

7-A Youth are entitled to have a knowledgeable and trained education advocate who reinforces the value of the youth’s investment in education and helps the youth plan for post-school training, employment, or college; efforts must be made to recruit appropriate individuals (i.e., foster parents, birth parents, child welfare caseworkers, teachers, and guidance counselors).

7-B Youth exiting care (because of age or because their permanency objectives have been reached) have significant connections to at least one adult to help the youth continue education pursuits.

7-C Youth have an education decision maker at all times during a child welfare case, who is trained in the legal requirements relating to education decisions for children with and without disabilities.
7-D Youth with disabilities who are eligible for the appointment of a surrogate parent have access to a pool of qualified, independent, and well-trained individuals who can serve in that role, and are assigned a surrogate in a timely manner, but no later than 30 days after a determination that a surrogate is needed.

8. Youth have supports to enter into, and complete, postsecondary education.

8-A Youth are exposed to postsecondary education opportunities, and receive academic support to achieve their future education goals.

8-B Youth in care and youth who have exited care (because of age or because their permanency objectives have been reached) have financial support or tuition fee waivers to help them afford postsecondary education.

8-C Youth have clear information and concrete help with obtaining and completing admission and financial aid documents.

8-D Youth have access to housing during postsecondary school vacations or other times when school housing is unavailable.

8-E Youth over 18 can remain in care and under the courts’ jurisdiction to receive support and protection while pursuing postsecondary education.

8-F Youth have access to academic, social, and emotional supports during, and through completion of, their postsecondary education.

8-G Youth with disabilities pursuing higher education goals receive the supports to which they are entitled to under federal and state laws.
1. Youth are empowered and engaged to make decisions about their own education and future.

1.1 - Youth receive full information about educational opportunities available to them, and are regularly asked about their educational preferences and needs. Youth preferences, strengths, and needs are central to curricular and placement determinations.

1.2 - Youth receive training about their educational rights including due process and special education rights, and self-advocacy.

1.3 - Youth participate in school and juvenile justice system meetings about their education and future.

1.4 - Youth are given an opportunity to participate in court proceedings; courts and attorneys are trained on involving youth in court and in asking questions about educational interests, goals, and progress.

1.5 - Youth are supported by school and juvenile justice professionals with appropriate knowledge and training who engage youth in education planning.

1.6 - Youth opinions and wishes are prioritized in determining their educational decision maker, placement, educational goals and program, and post-secondary decisions, including living and school placement upon release.

1.7 - Youth with disabilities actively participate in special education meetings, the development of their Individualized Education Programs (IEPs) including transition planning, and receive the support they need to be self-advocates.

1.8 - Youth who are English language learners and/or limited English proficient receive the supports they need to be effective self-advocates for their educational needs.

2. Youth have at least one adult who is invested in their education, before, during, and after involvement in the juvenile justice system.

2.1 - Youth are supported by parents who are engaged and have received information and training about educational rights, special education law, and advocacy sufficient to maintain their engagement.

2.2 - When a youth’s parent is available but requires supports to fully engage in education advocacy, the juvenile justice system and other stakeholders collaborate to provide access and support to the parent in order to build capacity and best serve the youth.

2.3 - When the parent is not available to participate in the youth’s education, even with supports for the parent, another legally-authorized education decision-maker is identified for the youth. All youth without an available parent, not just those with identified disabilities, are appointed an education decision-maker. The youth’s preference for an alternate education decision-maker, including other family members, is solicited and prioritized. If a family member is not available or appropriate, youth have access to a pool of qualified, independent, and well-trained individuals who speak the youth’s native language who can serve in this role and be timely appointed, and in compliance with the IDEA if applicable.

2.4 - Youth are engaged by staff sensitive to and supportive of the cultural and ethnic background of youth and their family.

2.5 - All youth, including youth with disabilities, youth of color, LBGTQ and gender non-conforming youth, and youth who are English language learners or limited English proficient, have mentors who are culturally competent to empower and support them and understand their strengths and unique barriers to educational success.

2.6 - Youth's parents who are limited-English proficient receive information about their children’s education in their native language, including all information needed to advocate on behalf of their children.

2.7 - Youth are supported by trained professionals, including school staff, behavioral health staff, judges, defense counsel, case managers, Juvenile Probation Officers, child welfare workers, and facility staff, to gain access to high-quality education and career/technical programs. Youth receive assistance from interagency liaisons and/or transition specialists who get to know the youth and forge an ongoing relationship.

2.8 - Youth attend schools, including placement schools, that engage parents and families, and rely on parents/guardians as education decision-makers, including ensuring that parents or other legally authorized decision-makers make decisions with regard to a youth’s special education needs.

2.9 - Youth have access to legal representatives trained to identify and respond to education issues in juvenile justice cases, school disciplinary hearings, and special education matters.

2.10 - Youth appear before judges who consider their desires and educational needs in crafting dispositions and ordering placements, address education issues in depth at all review hearings, and consider the quality and consequences of education available in the juvenile justice placement in all decisions while maintaining the youth at home and in community schools wherever possible.

3. After being charged or adjudicated delinquent, youth remain in the same community school whenever feasible or enroll in a new community school.

3.1 - Youth remain in the same school unless an out-of-home placement is necessary for the rehabilitation and/or safety of the youth, or the youth’s decision-maker, in consultation with the youth, recommends a change in school placement, and the judge, placing agency and
youth/family determine the student should be placed in a different school district or school placement.

3.2 - Youth remain at home and in their local public schools for truancy or other status offenses, with needed interventions and supports, rather than being placed in juvenile justice placements and on-grounds schools or being transferred to alternative disciplinary schools.

3.3 – Youth of color are not subject to and negatively impacted by racial bias because individuals involved in youth’s placement are vigilant about identifying and correcting bias that leads to disproportionate out-of-home placement of students of color, and agencies and organizations collecting data on disproportionality, and enacting appropriate corrective policies when disparities are identified.

3.4 - Youth with disabilities are placed in the least restrictive, most inclusive school environment that can meet their individual needs.

3.5 – When out of home placement is necessary and used as a last resort, youth are placed close to home, taking into account distance and the ability of the youth to continue at the current school.

3.6 - Youth in placement are afforded the opportunity to continue to attend their home school or attend the local public school close to the placement (as opposed to an on-grounds program).

3.7 - Youth are not referred to alternative disciplinary schools or otherwise pushed out of school due to juvenile justice involvement.

3.8 - Youth are not held in detention awaiting appropriate community education programs.

4. Youth involved in the juvenile justice system who are educated in the community receive access to the full range of educational opportunities and supports.

4.1 - Youth participate in the full school experience, and are not excluded from extra-curricular or recreational activities due to juvenile justice system involvement, conditions of probation, or electronic monitoring.

4.2 - All youth – in local schools, alternative disciplinary schools, or during disciplinary exclusion – receive access to adequate education that meets their educational needs and provides a full array of educational opportunities.

4.3 - Youth receive needed academic and non-academic supports, including access to remedial programs, credit recovery, counseling and behavioral health services, gifted and talented education, career and technical programs, and job exploration opportunities.

4.4 - All youth feel safe, empowered, and free from discrimination on the basis of race, ethnicity, marital or parental status, religion, disability, HIV status, sexual orientation, gender identity or gender expression. If a school has sex-segregated activities such as gym class, health class, or extra-curricular sports, or facilities such as bathrooms or locker rooms, youth are permitted to participate in activities, programs and facilities consistent with their gender identity.
4.5 - Youth with disabilities receive the specially designed instruction, targeted interventions, services, and accommodations they need to make meaningful progress in the least restrictive environment.

4.6 - Youth who are English language learners and/or limited English proficient receive effective ESOL instruction and the modifications to curriculum and instruction to which they are legally entitled, and they and their families receive legally mandated interpretation and translation services.

4.7 - Youths’ appointments and court appearances are scheduled to minimize their impact on the child’s education, and youth are not penalized for missing school or work because of court or juvenile justice case-related activities.

4.8 - Youth are not subject to blanket education-related terms of probation that fail to take into account the youth’s individualized education needs and traumatic experiences. Education matters – attendance, engagement with school, homework – should not be addressed by the probation system but rather by the school, service providers, and caregivers/family.

4.9 - Youth receive full due process before any exclusion from school or placement in a restrictive setting, including meaningful manifestation determination reviews for youth with disabilities to determine if the youth’s conduct is related to or the result of a disability or the failure to follow the youth’s IEP, and includes an assessment of the student’s mental or behavioral health condition that may contribute to behavior, a functional behavioral assessment and the development of or revision to a youth’s positive behavior support plan.

4.10 – Youth are not subject to school policies and administration of school discipline that disproportionately impact youth of color.

4.11 - Students receive sufficient information to understand all policies and practices related to school discipline and their substantive and procedural rights.

5. Youth in juvenile justice placements are provided with a high quality educational experience.

5.1 - Upon arrival at all juvenile justice placements, a youth’s educational needs and levels are assessed, with input from the youth and parents or other authorized education decision-maker.

5.2 - Youth are assessed for special education needs early on, referred for an initial evaluation where necessary, provided with an immediate temporary IEP where necessary, and a comprehensive IEP is developed and implemented.

5.3 - Youth are offered programs and instructional services that are responsive to their individual needs and free from racial or other bias.

5.4 - Home school records are transferred immediately, both at the beginning of placement and at any point of transfer or exit from juvenile justice placement, and a student’s participation in individualized education services are never delayed because school records have not yet been received.
5.5 - Youth in placement schools are provided with high quality academics and the same state-aligned curriculum and instructional time as would be provided in traditional public schools. Short-term detention facilities work in collaboration with local school districts to provide educational modules or other approaches to keep young people on track with their home schools.

5.6 - Youth with disabilities receive a free appropriate public education in the least restrictive environment, including needed special education and related services, transition planning and other supports through meaningful IEPs that are timely updated; developed with parent/family and youth input; and reflect the full range of services, accommodations and modifications necessary for academic progress.

5.7 - Youth who are English language learners and/or limited English proficient receive the interventions and support they need while attending school in placement, including ESOL instruction, modifications to curriculum and instruction, and access to translation and interpretation services as required by law.

5.8 - Youth are taught by qualified teachers (including special education teachers when applicable) who are properly certified, trained and permanently assigned to a placement and able to provide consistent instruction. Youth who receive instruction online or through a computer program are also supported by “live” certified and trained teachers.

5.9 - Youth receive all needed educational supports in placement schools, including intensive research-based remedial education and targeted literacy support, credit recovery, access to AP or IB courses and gifted education.

5.10 - Youth receive year-round educational programs when in placement school settings. Youth are not denied meaningful education services due to disciplinary consequences.

5.11 - Youth in juvenile justice placements have access to technology, including the internet, in order to complete educational assignments and academic activities.

6. Youth in juvenile justice placements are educated in a supportive, positive school environment where they feel safe and empowered.

6.1 - Youth attend schools free from discrimination based on race, sex, sexual orientation, gender presentation, national origin, language, disability or other characteristics and are educated in facilities that engage in data analysis and independent review to survey youth and assess programs to identify concerns of and bias.

6.2 - Youth are taught by staff who are trained in culturally competent, gender responsive, trauma-informed, strengths based and developmentally appropriate responses to behavior.

6.3 - Youth are informed of the grievance or complaint procedure in any placement and are informed of their education rights. Youth are provided meaningful access to utilize the grievance process, even during a restrictive disciplinary placement like solitary confinement.

6.4 - Youth with disabilities are educated in a welcoming environment and are not segregated or excluded based on their disability or behavior that is a manifestation of their disability. Youth
with disabilities receive appropriate interventions to address any behavior that interferes with their access to special education, whether a manifestation of their disability or not.

6.5 - Youth have access to comprehensive, supportive mental health services and school staff are educated and informed about each youth's unique needs and the appropriate educational approaches for those needs.

6.6 - Youth have access to comprehensive sexual health education that is inclusive of LGBTQ sexual health needs.

6.7 - Youth who are learning English are educated in a welcoming environment and receive access to the full range of educational programming offered to native English speakers.

6.8 - Youth are not segregated or discriminated against in a school setting for their sexual orientation, gender identity or expression. Youth identifying as LGBTQ/GNC receive support and interventions by teachers trained to be culturally competent to issues facing LGBTQ/GNC youth including that they are at higher risk for attempting suicide, experiencing suicidal thoughts or engaging in self harm than straight cisgender youth.

6.9 - Youth in placement schools receive positive disciplinary responses that do not rely on restraints of any kind or duration, solitary confinement, or other punitive interventions.

6.10 - Youth are not denied education either as a punishment for misconduct outside the school setting, or because of correctional placements such as solitary confinement.

6.11 - Youth are provided meaningful and thorough due process protections before any exclusion from school, including meaningful manifestation reviews for youth with disabilities to ensure that they are not punished for conduct relating to their disability or the school’s failure to follow their IEP.

6.12 - Youth in placement schools have regular meaningful family and community visits. Placement schools engage and involve parents in their child's education.

7. **Youth have access to high quality career pathways programs, especially in juvenile justice placements.**

7.1 - Youth, including those in placement, receive meaningful career exploration, career planning, guidance and job training services as well as comprehensive social emotional and “21st Century” skills to identify, obtain, and sustain employment.

7.2 - Youth, including those in placement, have access to career/ technical education programs that offer industry-recognized credentials and certificates.

7.3 - Youth have equal access to career/technical education programs regardless of gender.

7.4 - Youth, including those in placement, have access to literacy and other academic programming that is fully integrated with career/technical education.
7.5 - Youth have access to their own employability documents (including social security card, birth certificate, resume).

7.6 - While in placement, youth are able to participate in internships and jobs in the placement and/or community.

7.7 - Youth with disabilities in juvenile justice placements are fully integrated and allowed full access to career pathways and career/technical education programs, with appropriate accommodations.

7.8 - Youth over age 16 (ideally 14) in juvenile justice placements receive thorough transition planning services that build on their identified strengths and interests, including, when applicable appropriate services and supports as required under the IDEA.

7.9 - Youth who are English Language Learners or limited English proficient receive the interpretation and translation services, ESOL instruction and modifications in career/technical education programs and equal access to employment opportunities to which they are entitled under federal and state law.

8. Youth receive supports to prepare for, enter, and complete postsecondary education and training.

8.1 - Youth are exposed early to postsecondary education opportunities, receive academic and other support to achieve their future education goals, and are supported by a culture that reinforces their ability to attend and succeed in higher education or training.

8.2 - Youth working toward a high school diploma have access to dual enrollment programs.

8.3 - Youth with high school diplomas or high school equivalency degrees have access to a variety of post-secondary education or training, including while attending education programs in juvenile justice placements.

8.4 - Youth are educated about their rights and availability of financial aid, and receive assistance with application for Pell Grants and other funding for higher education.

8.5 - Youth receive clear information and concrete help with obtaining and completing admission and financial aid documents.

8.6 - Youth receive support to expunge juvenile or adult records and advice on how to answer admission and job interview questions, so juvenile or criminal involvement does not foreclose post-secondary education options and access.

8.7 - Youth have access to optional peer groups, tutoring, and other supports for youth with juvenile justice involvement in higher education institutions.

8.8 - Youth who have drug-related convictions receive individualized support for navigating federal financial aid processes, including support in locating, enrolling in, and completing an approved drug rehabilitation program.
9. Youth have smooth transitions between home schools and schools in juvenile justice placements and receive effective reentry planning and supports.

9.1 - Youth receive robust education planning upon entering any juvenile justice placement – whether short- or long-term – to ensure continuation of their then-current credit-bearing coursework and career/technical training program.

9.2 - Youth receive re-entry planning from the moment they enter a juvenile justice placement, including planning relating to academic and career/technical education.

9.3 - Youths’ education records are comprehensive and accurate.

9.4 - Records promptly follow youth to any new school or placement, are kept private and are shared only with necessary individuals working with the youth. There are short and definitive timeframes set for record transfers and lack of records or a delay in receipt of records do not bar a student from enrolling in school (either in a placement school or a school in the community).

9.5 - Whether in a short- or long-term placement, youth have trained transition coordinators and multi-disciplinary transition teams to help them re-enroll in their next school and obtain needed supports before and upon reentry. The transition coordinator ensures that youth receive appropriate school programming when transitioning between school settings, sit for appropriate exams, obtain a transcript reflecting credits awarded and academic mastery, and register for appropriate coursework.

9.6 - Youth receive full or partial credit for coursework completed in prior school, or credit waivers for electives not required by state law, and youths’ credits promptly transfer to a school or juvenile justice placement.

9.7 - Youths’ career/technical competencies and credentials are passed along to the subsequent school, which takes into account the youth’s career interests and experience in making curricular and school placement decisions.

9.8 - Youth required to change schools because of juvenile justice involvement are allowed to participate in all academic, career/technical, and extracurricular programs upon reentry even if normal timelines have run or programs are full.

9.9 - Youth are not barred from enrolling in school for a high school diploma even if they obtained their high school equivalency while in placement.

9.10 - Youth are involved in an assessment of whether to return to their original school, and if it is not safe or appropriate for a student to return to their school of origin, placement staff assist with options and procedures to transfer to another school in the community.

9.11 - Youth are immediately enrolled in an appropriate school or job training program after leaving a juvenile justice placement, with a right to return to their school of origin, and are not placed automatically in alternative disciplinary programs nor automatically placed in a cyber education program.
9.12 - Youth with juvenile records are allowed equal access to neighborhood public schools, specific school programs, special admittance (e.g. “magnet”), and charter schools. Facility staff help youth complete school applications for the following year.

9.13 - Youth re-entering the community have access to credit-bearing coursework, career/technical education, job training and other career pathways programs, with needed accommodation and supports.

9.14 - Youth have a right to be enrolled in school and begin classes immediately and promptly receive all services required by IDEA or Section 504 when eligible.

9.15 - Youth have the ability to receive a high school diploma when they satisfy mandatory state requirements even when they have attended multiple schools with varying local graduation requirements.

9.16 - For students with IEPs, students’ progress and continued need for intensive academic remediation post-release is documented and the school district provides these services post-release.

9.17 - Youth in detention or whose placement time is intended to be short remain enrolled in their home school.

10. All marginalized youth – and particularly youth of color, youth with disabilities, girls, LGBTQ youth, gender non-conforming and transgender youth, English Language Learners, youth who are involved with both child welfare and juvenile justice systems, and those with intersectional identities – are educated in their home schools rather than being disproportionately assigned to juvenile justice placements, and receive the services, support and protections they need to address their unique barriers to education success.

10.1 Youth of color are offered programs and instruction free from racial or ethnic bias and individuals involved in youth’s placement are vigilant about identifying and correcting bias that leads to disproportionate out of home placement of students of color.

10.2. Youth identifying as LGB/TGNC, at particular risk for attempting suicide or engaging in self harm, are not punished with segregation or isolation that is harmful to their mental health and excludes them from educational opportunities.
EXECUTIVE SUMMARY

1. **Summary of the Resolution(s)**

   The Resolution calls on the American Bar Association to endorse the Foster Care and Juvenile Justice Blueprints for Change. The Blueprints provide a framework to improve educational access, stability, and success for court-involved youth. The Resolution also calls on attorneys, judges, and bar associations to improve legal advocacy in juvenile court and education matters, and for legislators and policymakers to create policies and practices that ensure educational rights.

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

   Youth in the foster care and juvenile justice systems often change schools, face delays in enrollment, fail to receive partial credit when transferring, and are pushed out or drop out of school. Only half of foster care youth and one third of juvenile justice youth graduate from high school by age 18, and those that do not graduate face a lifetime of reduced earning potential. The Blueprints provide a framework for attorneys, judges, legislators, and policymakers to ensure court-involved youth can remain in their community school, be empowered to make educational decisions, and have supports in post-secondary education and training.

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

   This Resolution will allow the ABA, including the Center on Children and the Law and its partners the Legal Center on Foster Care & Education and the Legal Center for Youth Justice and Education, to share the Blueprints, promote collaboration through state networks, and provide technical assistance to local partners. This Resolution will enable the ABA to voice support for proposed legislation in Congress and in state legislatures that is consistent with the Blueprints.

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

   No minority views or opposition have been identified.
RESOLVED, That the American Bar Association urges Congress to amend the Gun Control Act of 1968 to include, among the list of those ineligible to possess, purchase, sell, deliver, or otherwise transfer any firearm, persons who have been previously convicted of a misdemeanor crime of violence that was motivated by hate or bias because of the actual or perceived race, color, religion, national origin, gender, sexual orientation, gender identity or diversity, or disability of any person; and

FURTHER RESOLVED, That the American Bar Association urges state, local, tribal, and territorial legislatures to enact laws rendering a person ineligible to possess, purchase, sell, deliver, or otherwise transfer any firearm if that person has been previously convicted of a misdemeanor crime of violence that was motivated by hate or bias because of the actual, or perceived race, color, religion, national origin, gender, sexual orientation, gender identity or diversity, or disability of any person.
EXECUTIVE SUMMARY

1. **Summary of the Resolution**

   Urges Congress to amend the Gun Control Act of 1968 to include, among the list of those ineligible to possess, purchase, sell, deliver or otherwise transfer any firearm, persons who have been previously convicted of a misdemeanor crime of violence that was motivated by hate or bias because of the actual or perceived race, color, religion, national origin, gender, sexual orientation, gender identity or diversity, or disability of any person.

   Also urges state, local, tribal, and territorial legislatures to enact laws rendering a person ineligible to possess, purchase, sell, deliver or otherwise transfer any firearm if that person has been previously convicted of a misdemeanor crime of violence that was motivated by hate or bias because of the actual, or perceived race, color, religion, national origin, gender, sexual orientation, gender identity or diversity, or disability of any person.

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

   This resolution adds persons convicted of misdemeanor hate crime to Federal and state laws that already prohibit categories of individual from buying firearms. Like misdemeanor convictions for domestic violence, already excluded, hate crimes frequently entail use of weapons and can often escalate in the future due to the underlying biases and prejudices. For public safety it is imperative to keep firearms out of the hands of individual who have demonstrated this animus.

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

   This policy directly addresses the issue at hand by making it illegal to own, possess, sell or transfer a firearm if you have been convicted of a misdemeanor hate crime.

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

   Criminal Justice Section supports this resolution as applied to persons convicted of a hate crime. It is still debating whether it should apply to situations where a person’s sentence has been enhanced because the victim is a member of a protected class.
RESOLVED, That the American Bar Association urges state, local, territorial, and tribal governments to enact statutes, rules, or regulations authorizing courts to issue gun violence restraining orders, including *ex parte* orders, that include at least the following provisions:

1. That a person (a “petitioner”) with documented evidence that another person (a “respondent”) poses a serious threat to himself or herself or others may petition a court for an order temporarily suspending the respondent’s possession of a firearm or ammunition poses a credible threat;

2. That there shall be a verifiable procedure to ensure the surrender of firearms and ammunition pursuant to the court order; and

3. That the issuance of the gun violence restraining order shall be reported to appropriate state or federal databases in order to prevent respondent from passing a background check required to purchase a firearm or obtain a firearm license or permit while restraining order is in effect.
1. **Summary of the Resolution**

Urges state, local, territorial, and tribal governments to enact statutes, rules, or regulations that authorize courts to issue gun violence restraining orders, including *ex parte* orders.

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

A Gun Violence Restraining Order (GVRO) is a simple legal procedure to enable courts to remove guns from those who are likely to use them to harm themselves or others.

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

This resolution sets general standards for obtaining a GVRO and provides wide latitude to states to enact laws best suited to their particular circumstances and existing public policy. GVROs are already a legal option in several states. In many cases, the laws are based on similar procedures in the state’s domestic violence laws.

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

None at this time.
RESOLVED, That the American Bar Association urges federal, state, local, tribal, and territorial
governments to enact legislation prohibiting discrimination in housing on the basis of lawful
source of income.
EXECUTIVE SUMMARY

1. Summary of the Resolution

The resolution urges federal, state, local, and territorial governments to enact legislation prohibiting discrimination in housing on the basis of lawful source of income.

2. Summary of the Issue that the Resolution Addresses

A common form of discrimination in housing is the denial of housing based on a housing applicant’s lawful source of income. As a threshold matter, lawful source of income includes income from: 1) a lawful profession, occupation or job; 2) any government or private assistance, grant, loan or rental assistance program, including low-income housing assistance certificates and vouchers issued under the United States Housing Act of 1937; 3) a gift, an inheritance, a pension, an annuity, alimony, child support, or other consideration or benefit; or 4) the sale or pledge of property or an interest in property. Lawful source of income does not prevent a property owner from determining, in a commercially reasonable and non-discriminatory manner, the ability of a housing applicant to afford to purchase or rent the property.

Every year, families are rejected from housing of their choice because their income, albeit lawful and sufficient in amount, is not accepted by a property owner. Often the denial of housing will serve as a pretext for a prohibited form of discrimination. For example, a property owner who does not want to rent to elderly persons will simply deny a housing application claiming that retirement benefits are not a sufficient source of income. A property owner who does not wish to rent to persons with disabilities will tell an applicant on Supplemental Security Income (SSI) that government benefits are not an acceptable source of income.

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

This policy will reaffirm the ABA’s commitment to ensuring that decisions about housing are made on the basis of bona fide qualification rather than stereotypes or prejudices. By adopting this Resolution, the ABA can assist the work of housing advocates, lawmakers and litigators that have tirelessly worked to end the cycle of poverty and right the long effects of racial and economic housing segregation in the United States.

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

No minority views or opposition have been identified.
RESOLVED, That the American Bar Association urges all state, local, territorial, and tribal legislative bodies to enact statutes and school districts to adopt policies that:

1. a) rigorously protect the ability of student journalists at the secondary and postsecondary levels to make the independent editorial judgments necessary to meaningfully cover issues of social and political importance without fear of retaliation or reprisal, provided that such statutes should also allow for reasonable restrictions on the time, place, and manner of student expression, and should neither authorize nor protect expression by students that is defamatory or invasive of privacy, is obscene or otherwise unlawful, or is reasonably anticipated to incite students to act unlawfully;

2. b) safeguard advisors who supervise students participating in school-sponsored journalism against punitive action for supporting their students in gathering and publishing news of interest and concern to their communities;

3. c) expressly declare that criticism of government policies or programs, or the discussion of issues of social or political controversy, is protected speech in journalistic media, regardless of the medium’s school affiliation or sponsorship; and

4. d) ensure that student journalists have the right to exercise freedom of speech and of the press in school-sponsored media.

FURTHER RESOLVED, That the American Bar Association urges secondary and postsecondary educational institutions to offer students meaningful opportunities in school-sponsored journalism to enhance their civic learning and to promote all students’ media literacy.
EXECUTIVE SUMMARY

1. **Summary of the Resolution**

That Resolution urges all state, territorial and tribal legislative bodies to enact statutes that rigorously protect the ability of student journalists at the secondary and postsecondary levels to make the independent editorial judgments necessary to meaningfully cover issues of social and political importance without fear of retaliation or reprisal, provided that such statutes should also allow for reasonable restrictions on the time, place, and manner of student expression, and should neither authorize nor protect expression by students that is defamatory or invasive of privacy, is obscene or otherwise unlawful, or is reasonably anticipated to incite students to act unlawfully; safeguard the student media advisors who supervise student journalists; declares that criticism of government policies or programs, or the discussion of issues of social or political controversy, is protected speech in journalistic media, regardless of the medium’s school affiliation or sponsorship; urge school districts to adopt written student freedom of expression policies in accordance with their jurisdiction’s statutes; and ensure that student journalists have the right to exercise freedom of speech and of the press in school-sponsored media. It also urges secondary and postsecondary educational institutions to offer students meaningful opportunities in school-sponsored journalism to enhance their civic learning and to promote all students’ media literacy.

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

The Resolution addresses the great national anxiety over the civic readiness of young Americans, about escalating hostility toward journalism and journalists, and about the inability of all users of social media to differentiate between fact and fabrication.

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

Given the current national climate, it is timely and appropriate for states, territories, and tribes to take decisive action to fortify the quality of journalism education for the benefit of participants and consumers alike. Meaningful civic education requires that students feel safe and empowered to discuss issues of social and political concern in the responsible, accountable forum of journalistic media. This policy will allow the ABA to effectively advocate and educate on this issue.

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

No minority views or opposition have been identified.
RESOLVED, That the American Bar Association urges the Administration and the Congress to support review of the processes by which military records are corrected, discharge status petitions are considered, and the character of a veteran’s discharge reviewed, in order to enhance the accessibility, availability, and timeliness of such determinations, including through the recommendations set forth below;

FURTHER RESOLVED, That the American Bar Association urges the U.S. Department of Defense to examine how post-traumatic stress (PTS), traumatic brain injury (TBI), and military sexual trauma (MST) correlate to the specific types of misconduct resulting in less-than-honorable discharges;

FURTHER RESOLVED, That the American Bar Association urges the U.S. Department of Defense to create policies for discharge upgrade petition review that consider: (1) clear standards for establishing proof of a nexus between PTS, TBI, and MST and the resulting discharge status; (2) implementing an evidentiary rule that the initial burden of production by a veteran as to nexus may be satisfied where the veteran is diagnosed with PTS, TBI, or MST, provided that mitigating factors such as distinguished service in the field or aggravating factors such as particularly egregious conduct are considered; and (3) authorizing flexible application of standards in light of a nexus between the misconduct and the medical condition(s);

FURTHER RESOLVED, That the American Bar Association urges the U.S. Department of Defense to establish panels within each of the military services’ boards for correction upgrade petitions involving PTS, TBI, or MST, comprised of members with appropriate medical expertise to recognize the potential nexus between the misconduct and these conditions, and to provide counsel to assist petitioners in the drafting and presentation of their cases.

FURTHER RESOLVED, That the American Bar Association urges the Office of the President and the U.S. Department of Veterans Affairs to explore whether certain executive powers such as clemency may be exercised consistent with existing discharge
upgrade procedures in order to expedite such procedures for certain veterans utilizing standards such as categorical eligibility.

FURTHER RESOLVED, That the American Bar Association urges Congress to allocate new and adequate funding to support the special panels and provision of petitioners’ counsel for the panels and processes described above, as well as identifying new sources of funding to be administered by the U.S. Department of Veterans Affairs, Legal Services Corporation, and other relevant entities, to support civil legal aid and pro bono organizations in the delivery of free legal services to advise and assist petitioners, particularly those whose cases involve PTS, TBI, MST, and other mental health issues.

FURTHER RESOLVED, That the American Bar Association encourages the U.S. Departments of Defense and Veterans Affairs, state departments of veterans affairs, veteran service organizations, and all other stakeholders to undertake programs to identify veterans who may be eligible for discharge upgrades, notify those veterans and their caregivers of such opportunities, and to educate them about upgrade availability, the processes to petition for upgrade, and supportive resources to assist with obtaining such upgrades and the steps and stages involved.
EXECUTIVE SUMMARY

1. Summary of the Resolution

Recommending review and improvement of the processes by which military records are corrected, discharge status petitions are considered, and the character of one’s discharge is reviewed.

2. Summary of the Issue that the Resolution Addresses

Discharge upgrades are necessary for many veterans to ensure that they receive the full range of benefits to which they should otherwise be entitled. Historically, it was not well understood how post-traumatic stress, traumatic brain injury, and sexual assault trauma could give rise to conduct that would subsequently result in less-than-honorable discharge, which has left a large population of veterans without access to benefits due to discharge status arising from these forms of injury.

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

The proposed policy position makes a number of recommendations about how the discharge upgrade process could be improved in order to ease the burden on petitioners whose post-traumatic stress, traumatic brain injury, and/or sexual assault trauma was connected to conduct that resulted in less-than-honorable discharge. These include better recognition of the connection between the injuries and discharge; establishing rebuttable presumptions based on such connection and consideration of mitigating factors; creating specialized panels that deal specifically with petitions based on these conditions; and exploring alternative means, such as clemency, for the affected veteran population. The policy also calls for funding to create specialized panels and support free legal services for petitioners, as well as improving education and outreach to veterans who may be eligible for discharge upgrades but not aware of the process.

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

No minority views or opposition have been identified. The proponents have consulted with the offices of general counsel within the Department of Defense and Department of Veterans Affairs to ensure that the proposed policy does not run counter to programs and policies within those agencies to address discharge upgrade process issues.
RESOLUTION

RESOLVED, That the American Bar Association urges all courts to develop plans of action to make de-biasing training an important part of both initial judicial training and continuing judicial education; and

FURTHER RESOLVED, That the American Bar Association urges local and state bar associations to work with courts to offer de-biasing training to judicial officers free of cost and at the convenience of the courts.
EXECUTIVE SUMMARY

1. Summary of the Resolution

This resolution urges courts nationwide, federal and state, to make training on implicit bias and de-biasing strategies for both new and existing members of the judiciary a priority.

2. Summary of the Issue that the Resolution Addresses

As expressed in a recent ABA article: “A judge’s task to be the most impartial member of the legal system is a great responsibility for any single person to carry, but nearly impossible when it comes to implicit bias. Implicit bias in judges may alter the way justice is delivered in a courtroom, including the ruling on the admissibility of evidence, sentencing, instructions or how they interact with others.” While the Judicial Division held an informative and helpful workshop for judges and lawyers on recognizing and working against implicit bias at the ABA’s Annual Meeting, more should be done nationally and in a uniform manner to ensure all judicial officers are aware of the potential for implicit judicial bias and are taught de-biasing strategies.

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

The proposed policy would address the above issue by incorporating implicit bias training into the judicial training process, both upfront and through periodic refreshers, to ensure that judicial officers are able to understand, recognize, and combat their judicial biases when serving as impartial members of the legal system.

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

The only opposition which has been voiced to the submitting entity is the potential for added costs and time constraints with implementation. These have been addressed by recommending that the training use free tools already prepared by the ABA and by recommending that the training be a priority and not a requirement.
RESOLUTION

RESOLVED, That the Association policies set forth in Attachment 1 to Report 400A, dated August 2017, are archived and no longer considered to be current policy of the American Bar Association and shall not be expressed as such.

FURTHER RESOLVED, That policies which have been archived may be reactivated at the request of the original sponsoring entities. If the original sponsoring entities no longer exist, requests may be brought to the Secretary to be placed on a reactivation list for action by the House of Delegates. Such reactivated policies shall be considered current policy for the Association and shall be expressed as such.

FURTHER RESOLVED, That the Board of Governors may act to reactivate policies when the House of Delegates is not in session.
30. Certification Programs  
   Standing Committee on Specialization  
   August, 2007

54. Sunshine Act  
   Section of International Law  
   August, 2007

61. Civil Rights Act  
   Commission on Women  
   August, 2007
30. Certification Programs
Standing Committee on Specialization
August, 2007 (Report 100-07AM100)

RESOLVED, That accreditation by the American Bar Association be continued for the lawyer specialty certification programs as reorganized and described as follows:

The accredited Criminal Law, Civil Law and Family Law Trial Advocacy lawyer specialty certification programs sponsored by the National Board of Trial Advocacy of Wrentham, Massachusetts which is now a division of a new organization called the National Board of Legal Specialty Certification; and

The accredited Social Security Disability Law lawyer specialty certification program sponsored by the National Board of Trial Advocacy of Wrentham, Massachusetts be transferred to the National Board of Social Security Disability Advocacy, which is a division of a new organization called the National Board of Legal Specialty Certification.

54. Sunshine Act
Section of International Law
August, 2007 (Report 118B-07AM118B)

RESOLVED, That the American Bar Association supports the International Trade Commission’s (“ITC”) adoption of procedures relevant to its compliance with the Government in the Sunshine Act, 5 U.S.C. § 552(b), that:

1. Support the ITC’s interpretation of the term “meeting” under the Government in the Sunshine Act to permit Commissioners to meet in a non-public manner as a body to discuss aspects of a particular investigation, prior to making a decision;

   Urge the ITC to employ, when applicable, Exemptions Four (discussion of confidential information) and Ten (formal agency adjudication) of the Government in the Sunshine Act; and

   Upon announcing their votes to the public, the Commissioners individually explain the rationale underlying the Commissioner’s vote.

61. Civil Rights Act
Commission on Women
August, 2007 (Report 302-07AM302)

RESOLVED, That the American Bar Association urges Congress to amend Title VII of the Civil Rights Act of 1964, 42 U.S.C.§ 2000e-5(e), and federal age or disability employment discrimination laws to ensure that in claims involving discrimination in compensation, the statute of limitations runs from each payment reflecting the claimed unlawful disparity.
EXECUTIVE SUMMARY

1. **Summary of the Resolution**

   This resolution archives Association Policies that are 10 years old or older. A policy that is archived is not rescinded. It is retained for historical purposes, but cannot be expressed as a current position of the ABA.

2. **Summary of the Issue which the Recommendation Addresses**

   The archiving project, mandated by the House of Delegates in 1996, will improve the usefulness of the catalogued Association positions on issues of public policy. Many of the Association’s positions were adopted decades ago and are no longer relevant or effective.

3. **An Explanation of How the Proposed Policy will Address the Issue**

   The archiving project will allow the Association to pursue primary objectives by focusing on current matters. It will prevent an outdated ABA policy from being cited in an attempt to refute Association witnesses testifying on more recent policy positions.

4. **A Summary of Any Minority Views or Opposition Which Have Been Identified**

   None at this time.
AMERICAN BAR ASSOCIATION
OFFICE OF THE SECRETARY
REPORT TO THE HOUSE OF DELEGATES

RESOLUTION

RESOLVED, That the Association policies adopted in 1997 which were previously considered for archiving but retained as set forth in Attachment 1 to Report 400B dated August 2017, are archived and no longer considered to be current policy of the American Bar Association and shall not be expressed as such.

FURTHER RESOLVED, That policies which have been archived may be reactivated at the request of the original sponsoring entities. If the original sponsoring entities no longer exist, requests may be brought to the Secretary to be placed on a reactivation list for action by the House of Delegates. Such reactivated policies shall be considered current policy for the Association and shall be expressed as such.

FURTHER RESOLVED, That the Board of Governors may act to reactivate policies when the House of Delegates is not in session.
Attachment 1

Policies to be Archived

    Section of Litigation
    February, 1997

17. Health Insurance
    Ohio State Bar Association
    February, 1997

24. Electronic Commerce
    Section of Business Law
    August, 1997

27. Hague Convention
    Section of Family Law
    August, 1997

38. Political Contributions
    New York City Bar Association
    August, 1997
Section of Litigation  
February, 1997(Report 116-97MM116)

RESOLVED, That the American Bar Association expresses its general support, with the exceptions noted, to the proposed revisions to Rule 23 of the Federal Rules of Civil Procedure recommended by the Advisory Committee on Civil Rules in April 1996 and approved by the Standing Committee on Rules of Practice and Procedure of the Judicial Conference of the United States for publication and public comment:

1. The Association supports:
   (a) proposed revision 23(b)(4) that would authorize settlement classes in the circumstances specified in the proposed Rule change, and provided that adequate due process protections are provided for the parties; (b) proposed revision 23(e) that would add a hearing requirement to the Rule;
   (c) proposed revisions 23(b)(3)(A) and (B) that would focus on the size of the individual claims in determining their viability without certification and the individual interest of class members in maintaining separate actions;
   (d) proposed revision 23(b)(3)(C) that would add “maturity” as a factor in determining the appropriateness of a class under the Rule; and
   (e) proposed revision 23(c) that would require a certification decision “when practicable” after the action has been brought.

2. The Association would oppose the proposed revision to Rule 23(b)(3)(F), which would provide for a balancing of probable relief to individual class members with the costs and burdens associated with class litigation unless the Rule would further provide for the consideration of the deterrent effect of accumulating small recoveries.

3. The Association supports proposed revision 23(f) that would permit discretionary interlocutory appeals of class certification decisions.

17. Health Insurance  
Ohio State Bar Association  
February, 1997(Report 8B-97MM8B)

RESOLVED, That the American Bar Association urges the repeal of Section 217 of the Health Insurance Portability and Accountability Act of 1996, effective January 1, 1997, which criminalizes certain asset transfers made for the purpose of qualifying for Medicaid benefits.
24. **Electronic Commerce**  
*Section of Business Law*  
*August, 1997 (Report 114-97AM114)*

**RESOLVED**, That the American Bar Association:

1. Supports electronic commerce as an important means of commerce among nations;

2. Supports commerce through electronic networks that are global in nature and require international communication and cooperation among all nations, including developing nations;

3. Encourages continued discussion in open international forums to remove unnecessary legal and functional obstacles to electronic commerce;

4. Encourages the private sector, governments, and international organizations to cooperate to establish a legal framework within which global electronic commerce can flourish in an environment that provides appropriate legal protection to all interested parties, while eliminating unnecessary legal and functional barriers to electronic commerce; and

5. Encourages the private sector to develop self-regulating practices that will protect the rights of individuals and promote the public welfare.

27. **Hague Convention**  
*Section of Family Law*  
*August, 1997 (Report 117-97AM117)*

**RESOLVED**, That the American Bar Association urges:

1) the Senate of the United States to give its advice and consent to the ratification of the Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children, the final text of which was adopted by the Hague Conference on Private International Law on October 19, 1996; and

2) the Congress of the United States to enact legislation to permit the United States to fully and uniformly implement this Convention which concerns custody matters and other measures taken for the protection of children and their property.
RESOLVED, That the American Bar Association:

1) condemns the conduct of lawyers making political campaign contributions to, and soliciting political campaign contributions for, public officials in return for being considered eligible by public agencies to perform professional services, including municipal finance engagements;

2) calls upon bar associations, lawyer disciplinary agencies and the judiciary to enforce, when applicable to prohibit this conduct, existing Rules of Professional Conduct, such as Model Rule 7.2(c) prohibiting a lawyer from giving “anything of value to a person for recommending the lawyer’s services”;

3) condemns the conduct of public officials considering as eligible for engagement by public agencies to perform professional services, including municipal finance engagements, only those lawyers who make political campaign contributions to, or solicit political campaign contributions for, public officials; and

4) calls upon legislative bodies, judicial rule-making agencies, bar associations, lawyer disciplinary agencies and public agencies to enact or adopt and enforce laws, rules and regulations that will discourage the conduct condemned in these resolutions.

FURTHER RESOLVED That the House of Delegates requests the President of the American Bar Association to appoint a task force:

a) to review issues related to political campaign contributions made or solicited by lawyers and effective solutions thereto, including the “pay-to-play” rule proposed by The Association of the Bar of the City of New York in its Recommendation 10D dated August 1997;

b) to determine whether additional professional standards, laws or procedures relating to political campaign contributions are necessary and desirable, including the conduct of lawyers making significant political campaign contributions to judicial candidates before whom the lawyers appear; and

c) to submit for consideration by the House of Delegates at its meeting in August 1998 recommendations as to any additional professional standards, laws or procedures found to be necessary and desirable in the form of amendments to the Model Rules of Professional Conduct, aspirational ethical standards of other appropriate measures.
EXECUTIVE SUMMARY

1. Summary of the Resolution

This resolution archives Association Policies adopted in 1997 which were previously considered for archiving but retained. A policy that is archived is not rescinded. It is retained for historical purposes, but cannot be expressed as a current position of the ABA.

2. Summary of the Issue Which the Resolution Addresses

The archiving project, mandated by the House of Delegates in 1996, will improve the usefulness of the catalogued Association positions on issues of public policy. Many of the Association's positions were adopted decades ago and are no longer relevant or effective.

3. An Explanation of How the Proposed Policy will Address the Issue

The archiving project will allow the Association to pursue primary objectives by focusing on current matters. It will prevent an outdated ABA policy from being cited in an attempt to refute Association witnesses testifying on more recent policy positions.

4. A Summary of Any Minority Views or Opposition Which Have Been Identified

None at this time