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RESOLUTION

RESOLVED, That the American Bar Association urges all employers in the legal profession to implement, maintain, and encourage the use of paid family leave policies for the birth, adoption, or foster placement of a child.
1. **Summary of the Resolution.**

This resolution urges all employers in the legal profession to implement, maintain, and encourage the use of paid family leave policies for the birth, adoption, or foster placement of a child.

2. **Summary of the issue that the resolution addresses.**

Reasonable paid leave for the birth, adoption, or foster placement of a child is limited within the legal profession. Use of paid leave for those fortunate to have the option is often stigmatized. This resolution seeks to have more employers in the legal profession adopt and encourage use of paid leave.

3. **Please explain how the proposed policy position will address the issue.**

This policy seeks to have more employers in the legal profession adopt and encourage use of paid leave.

4. **Summary of any minority views or opposition internal and/or external to the ABA which have been identified.**

No minority or opposing views have been identified.
AMERICAN BAR ASSOCIATION

YOUNG LAWYERS DIVISION
SECTION OF CIVIL RIGHTS & SOCIAL JUSTICE
LAW STUDENT DIVISION
SECTION OF STATE & LOCAL GOVERNMENT LAW
CRIMINAL JUSTICE SECTION

REPORT TO THE HOUSE OF DELEGATES

RESOLUTION

1 RESOLVED, That the American Bar Association supports the interpretation that
2 “race,” as included in antidiscrimination statutes, be not limited to the color of
3 one’s skin, but rather, includes other physical and cultural characteristics
4 associated with race;
5
6 RESOLVED, That the American Bar Association urges federal, state, local,
7 territorial, and tribal governments to enact legislation banning race discrimination
8 on the basis of the texture, style, or appearance of a person’s hair;
9
10 FURTHER RESOLVED, That American Bar Association encourages all federal,
11 state, tribal, territorial, and local court systems, in conjunction with state,
12 territorial, tribal and local bar associations, to carefully review their discrimination
13 policies and provide implicit bias training to eradicate discrimination on the basis
14 of the texture, style, or appearance of a person’s hair;
15
16 FURTHER RESOLVED, That the American Bar Association supports enactment
17 of the Creating a Respectful and Open World for Natural Hair Act of 2019 (S.
18 3167, H.R. 5309, 116th Congress) or similar legislation that advances
19 antidiscrimination on the basis of the texture, style, or appearance of a person’s
20 hair.
EXECUTIVE SUMMARY

1. **Summary of the Resolution.**

   This resolution encourages governments to enact legislation prohibiting discrimination based on the texture, style, or appearance of a person’s hair, address interpretation of the word “race” in antidiscrimination statutes to also include characteristics typically associated with race, and encourage courts, bar associations, and legal employers to review their antidiscrimination policies and provide implicit bias training that includes information on natural hairstyles.

2. **Summary of the issue that the resolution addresses.**

   Despite EEOC guidance to the contrary, federal appellate precedent has not found hairstyle to be an immutable characteristic associated with race and encapsulated by Title VII. Hairstyle discrimination is currently arguably legal in many jurisdictions.

3. **Please explain how the proposed policy position will address the issue.**

   By interpreting existing law to include hairstyles as a characteristic of race and encouraging jurisdictions to enact legislation opposing hairstyle discrimination, the ABA will work toward less invidious discrimination as outlined above.

4. **Summary of any minority views or opposition internal and/or external to the ABA which have been identified.**

   No opposition is known at this time.
RESOLUTION

RESOLVED, That the American Bar Association adopts the American Bar Association Election Administration Guidelines and Commentary, dated August 2020, to supplant all earlier versions, and recommends that all election officials ensure the integrity of the election process through the adoption, use, and enforcement of these Guidelines; and

FURTHER RESOLVED, That the American Bar Association urges that federal, state, local, territorial, and tribal governments provide state, local, territorial, and tribal election authorities with adequate funding to implement the Guidelines and Commentary.
EXECUTIVE SUMMARY

1. Summary of the Resolution.

Recommends that all election officials ensure the integrity of the election process through the adoption, use, and enforcement of these updated Guidelines and provide adequate funding in order to ensure the integrity and efficiency of the electoral process. This version of the Guidelines would supplant all prior versions: 01A112A, 05A101, 08A119A, and 09A116. The Guidelines were first adopted by the House in 2001 (01A112A) as a result of the 2000 presidential election and the need to provide uniform guidelines in election administration in order to enhance public trust and the integrity of our electoral process. The Guidelines were revised again in 2005 (05A101), 2008 (08A119A), and 2009 (09A116) due to changes and trends in election administration, including the need for standards for provisional balloting, which resulted in the inclusion of Appendix A, Model and Statutory Language on Provisional Balloting and Commentary, to the Guidelines.

2. Summary of the issue that the resolution addresses.

An election system must have several attributes in order to preserve the integrity of the electoral process: 1) that citizens who are eligible to vote be provided with a fair opportunity to vote; 2) that the ability to vote should be confined to those eligible to vote; 3) that voters be able to cast ballots freely without intimidation or improper influence; and 4) that the ballot be secure from the time it is cast to the time it is counted. The Standards were developed as a means of creating an electoral system that would protect the integrity of the ballot, without deterring political participation and voting by eligible citizens.

3. Please explain how the proposed policy position will address the issue.

The 2020 Guidelines are more user-friendly and in a more logical sequence, and the Commentary has been updated to present time and is intended to substantively supplement the 2020 Guidelines. They will be disseminated widely to Secretaries of State and other election officials responsible for the ongoing review and improvement of the election process in their states and localities, as well as to the United States Congress, which has authority to enact legislation governing federal elections. We also encourage their use by the ABA Governmental Affairs Office and Amicus Curiae Committee in advocacy on behalf of the Association.

4. Summary of any minority views or opposition internal and/or external to the ABA which have been identified.

None known.
RESOLVED, That the American Bar Association urges federal, state, territorial and tribal
governments to enact and enforce legislation that prohibits and penalizes the possession,
sale, and trade of shark fins.

FURTHER RESOLVED, That the American Bar Association urges that all nations enact
laws that prohibit and penalize the possession, sale, and trade of shark fins, if they
have not already adopted such laws; and

FURTHER RESOLVED, That the American Bar Association encourages all
international, regional, national, and state bar associations, and international
organizations, to promote policies and laws that prohibit and penalize the possession,
sale, and trade of shark fins.
EXECUTIVE SUMMARY

1. **Summary of the Resolution.**

   Penalizes the sale, trade, possession of shark fins

2. **Summary of the issue that the resolution addresses.**

   Shark fin trade in all forms contributes to the decimation of the shark population worldwide. The sharks represent a critical resource to oceanic ecosystems and therefore the continued decimation of sharks could lead to severe consequences in the marine ecosystem and fishing industries. The laws which prohibit the sale, trade, and possession of shark fins are not uniform and have been adopted in only certain jurisdictions. The current federal law has a loophole that is constantly exploited by those interested in conducting illegal business trade of shark fins.

3. **Please explain how the proposed policy position will address the issue.**

   This resolution advocates for consistent and comprehensive laws that penalize shark fin possession, sale, and trade in the US and abroad to protect sharks and stop organized crime from exploiting loopholes in the existing national, regional, and international laws.

4. **Summary of any minority views or opposition internal and/or external to the ABA which have been identified.**

   Shark populations are not threatened.
RESOLUTION

RESOLVED, That the American Bar Association urges all nations, including the United States, to become a party to and implement the 2019 Convention on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters.
EXECUTIVE SUMMARY

1. Summary of the Resolution.

The Resolution urges all nations, including the United States, expeditiously to become party to and implement the 2019 Convention on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters.

2. Summary of the issue that the resolution addresses.

The Resolution addresses the current imbalance between the ability of United States judgments to obtain recognition and enforcement in other countries without having to commence a new action, whereas most states in the United States provide a mechanism for non-U.S. commercial money judgments to be recognized and enforced in the United States.

3. Please explain how the proposed policy position will address the issue.

The proposed policy position urges support for the Convention that facilitates recognition and enforcement of judgments in analogous fashion to the recognition and enforcement of arbitration awards under the New York Convention.

4. Summary of any minority views or opposition internal and/or external to the ABA which have been identified.

None identified.
RESOLVED, That the American Bar Association urges the United States, other nations, and the United Nations to facilitate and promote neutral and inclusive dialogues between the government of Cameroon and separatist leaders;

FURTHER RESOLVED, That the American Bar Association urges adequate funding by the United States and other nations for the United Nations Office for the Coordination of Humanitarian Affairs’ Humanitarian Response Plan for Cameroon to overcome the ongoing humanitarian crisis in Cameroon;

FURTHER RESOLVED, That the American Bar Association urges the United States, other nations, and the United Nations to urge the government of Cameroon and separatist groups, as applicable, to comply with their obligations under international human rights and international humanitarian law;

FURTHER RESOLVED, That the American Bar Association urges the Commonwealth of Nations, the International Organization of La Francophonie, and the African Union to substantially support the above efforts and promote a peaceful resolution to the conflict; and

FURTHER RESOLVED, That the American Bar Association urges the President of the United States to continue to withhold beneficiary country status under the U.S. Trade and Development Act of 2000 until the Cameroon government demonstrates measurable progress in establishing the rule of law, including by providing fair trials for prisoners detained in connection with protests against the government.
EXECUTIVE SUMMARY

1. **Summary of the Resolution.**

This resolution supports international efforts to resolve Cameroon’s armed civil conflict and associated humanitarian and displacement crisis. Particularly, it supports promoting inclusive and neutral dialogue, international funding for humanitarian relief efforts, compliance with international human rights and humanitarian law, involvement by relevant regional organizations, and the implementation of strategic U.S. policy leverage points.

2. **Summary of the issue that the resolution addresses.**

This resolution addresses the ongoing armed conflict between Cameroon’s national government and Anglophone separatist forces in North West and South West Regions of the country. The conflict and accompanying abuses of human rights have produced devastating humanitarian conditions and a growing displacement crisis in the Anglophone regions of Cameroon.

3. **Please explain how the proposed policy position will address the issue.**

The proposed policy will address the issue primarily by enlisting the assistance and advocacy of relevant actors within the international community, including the United States, other countries, the UN, and regional organizations in which Cameroon holds membership. The resolution seeks to spur greater international involvement, urging states and multi-state bodies to use their influence to promote a peaceful resolution to the conflict and mitigate existing conditions.

4. **Summary of any 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 and enforce legislation, as well as educational policy, that:

(a) prohibits school personnel from using seclusion, mechanical, and chemical restraints on preschool, elementary, and secondary students;

(b) prohibits school personnel from using physical restraint on preschool, elementary, and secondary students unless the student’s behavior poses an imminent danger of serious physical injury to self or others, and only after all less intrusive, non-physical interventions have been tried and failed or deemed inappropriate to protect the student or others;

(c) prohibits, in situations where physical restraint is used because there is an imminent danger of serious physical injury, the use of restraints in a face-down position or any other position that is likely to impair a student’s ability to breathe or communicate distress, places pressure on a student’s head, neck, or torso, or obstructs a staff member’s view of a student’s face; and

(d) requires professional development and ongoing training in positive behavior interventions and trauma-informed care, including crisis de-escalation, restorative practices, and behavior management practices, for all school personnel.
EXECUTIVE SUMMARY

1. Summary of the Resolution

   Urges the adoption and enforcement of legislation and policy that prohibits school personnel from using seclusion, mechanical restraint, and chemical restraint on preschool, elementary, and secondary students, and prohibits the use of physical restraint unless the student’s behavior poses an imminent danger of serious physical injury to self or others, and only after all less intrusive, non-physical interventions have been tried and failed or have been deemed inappropriate to protect the student or others. In situations where physical restraint is used because there is an imminent danger of serious physical injury, a student cannot be restrained in a face-down position or any other position that is likely to impair the student’s ability to breathe or communicate distress, places pressure on a student’s head, neck, or torso, or obstructs a staff member’s view of the student’s face. The resolution also requires professional development and ongoing training in positive behavior interventions and trauma-informed care, including crisis de-escalation, restorative practices, and behavior management practices, for all school personnel.

2. Summary of the Issue that the Resolution Addresses

   Seclusion and various forms of restraint (mechanical, chemical, and physical) are punitive measures used in schools from elementary through high school in lieu of therapeutic interventions with students. Notwithstanding the long-standing recognition that these forms of behavioral intervention cause significant harm to children, school officials continue to deploy them to an unacceptably high degree. The Resolution calls for an end of the use of seclusion, mechanical and chemical restraints and significant limitations on the use of physical restraints, and in their place urges the use of positive behavioral supports and trauma-informed care to help children to thrive.

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

   The proposed policy position directly addresses this issue by calling for governments to adopt legislation and policies banning or limiting the above harmful practices.

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 reaccredits for an additional five-year term the following designated specialty certification programs for lawyers:

Social Security Disability Law program of the National Board of Trial Advocacy of Wrentham, Massachusetts;

Business Bankruptcy Law program of the American Board of Certification of Cedar Rapids, Iowa;

Consumer Bankruptcy Law program of the American Board of Certification of Cedar Rapids, Iowa; and

Creditors' Rights Law program of the American Board of Certification of Cedar Rapids, Iowa.
EXECUTIVE SUMMARY

1. Summary of the Resolution.

The resolution will grant reaccreditation to the Social Security Disability Law program of the National Board of Trial Advocacy and the Business Bankruptcy Law, Consumer Bankruptcy Law, and Creditors’ Rights Law programs of the American Board of Certification.

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 and reaccreditation.

4. Summary of any minority views or opposition internal and/or external to the ABA which have been identified.

None
RESOLUTION

RESOLVED, That the American Bar Association adopts certain clarifying provisions to
Standard 4.06(C) Written Examination of the Standing Committee on Specialization's
Standards for the Accreditation of Specialty Certification Programs for Lawyers, dated
August 2020.
EXECUTIVE SUMMARY

1. **Summary of the Resolution.**

   The resolution will approve revisions to Standard 4.06(C), which addresses written examinations of certifying organizations.

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, if approved, revises the exam standard to be applied during the review of an organization’s certifying exam during the accreditation and reaccreditation process.

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 and reaccreditation.

4. **Summary of any minority views or opposition internal and/or external to the ABA which have been identified.**

   None
RESOLVED, That the American Bar Association urges Congress to create and fund a Guardianship Court Improvement Program for adult guardianship (following the model of the State Court Improvement Program for child welfare agencies created in 1993) to support state court efforts to improve the legal process in the adult guardianship system, improve outcomes for adults subject to or potentially subject to guardianship, increase the use of less restrictive options than guardianship, and enhance collaboration among courts, the legal system, and the aging and disability networks.
EXECUTIVE SUMMARY

1. **Summary of the Resolution.** The proposed resolution from the Commission on Law and Aging and others urges Congress to create and fund a Guardianship Court Improvement Program for adult guardianship systems (following the model of the State Court Improvement Program for child welfare agencies created in 1993).

2. **Summary of the Issue that the Resolution Addresses.** The proposed resolution requests the ABA urge Congress to support improvement of state guardianship systems by investing federal funds and resources in a Guardianship Court Improvement Program. Adult guardianship is a drastic state intervention: a court removes the authority of an adult to make most decisions and delegates that authority to a guardian. An estimated one to three million people living in the United States have a guardian.

   Currently states bear the sole responsibility for judicial appointment, administrative cost, and monitoring of guardianships. A federally funded Guardianship Court Improvement Program could drastically improve the lives of individuals with guardians by supporting state courts, improving outcomes for adults in the system, increasing the use of less restrictive options than guardianship, and enhancing collaboration among courts, the legal system, and the aging and disability networks.

   This resolution advances the American Bar Association’s long-standing commitment to advancing guardianship reform, by ensuring guardianships are appointed only when necessary, encouraging the collaboration of state courts and guardianship stakeholders, and recognizing the need for federal support of state courts to protect the safety, well-being, and individual rights of millions of individuals in the United States who may be or have been appointed a guardian.

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

   The proposed policy position will bring attention to the argument for funding for a pilot Guardianship Court Improvement Program. The ABA’s support of such a program will lend credence to the concept as an innovative, viable, and much needed step in guardianship reform.

4. **Summary of Minority Views**

   None identified.
RESOLVED, that the American Bar Association urges prosecutors, defense attorneys, judges, probation officers, parole authorities, legislators, policymakers, and community partner organizations to consider using a restorative justice response to crime as one effective alternative, or adjunct to, a criminal adjudicatory process in appropriate cases, which contains the following elements:

1. Has a victim-centered approach;

2. Requires the informed consent of the victim or victim surrogate and the offender, that either party may withdraw;

3. Is facilitated by a trained specialist who can determine if the victim and the offender can be safely brought together and who can protect the interests of both;

4. Seeks to produce, if feasible, a voluntary agreement between the victim and the offender designed to acknowledge and repair the harm caused by the offender; and

5. Maintains data on the effectiveness of restorative justice practices to ensure that they are evidence-based and effective;

FURTHER RESOLVED that the American Bar Association urges federal, state, local, territorial and tribal governments to develop grant and funding streams to enable prosecutors, defense attorneys, judges, probation officers, parole authorities, legislators, policymakers, and community partner organizations to develop, maintain, and assess the effectiveness of restorative justice programs in a data-driven manner; and

FURTHER RESOLVED that the American Bar Association urges the National Institute of Justice to prioritize and make publicly available an evaluation of restorative justice practices nationwide that includes data on the underlying crime and eligibility criteria, the percentage of cases in which restorative justice was chosen by victims, victims’ satisfaction rates, recidivism rates, collection of restitution, evidence of racial or other bias, and effect on post-traumatic stress symptoms in victims.
EXECUTIVE SUMMARY

1. Summary of the Resolution.

This resolution urges criminal justice stakeholders to consider the development and use of restorative justice processes where appropriate, to crime victims interested in participating in them. It does not mandate the use of restorative justice, but encourages all parts of the criminal justice system, from pre-arrest to parole, to consider whether restorative justice procedures can be appropriate and helpful to crime victims seeking justice and accountability by an offender.

2. Summary of the issue that the resolution addresses.

Restorative justice has been successfully used in juvenile justice systems and in schools as an alternative to criminalizing behavior and zero tolerance disciplinary programs. Reform efforts in the criminal justice system presently focus on programs that similarly reduce incarceration and provide more meaningful responses to victims of crime and better accountability on the part of those who have broken the law, and restorative justice is one alternative.

3. Please explain how the proposed policy position will address the issue.

This resolution urges jurisdictions to initiate and improve use of restorative justice practices and emphasizes the necessary elements of a program, whether used as a way to divert defendants from traditional prosecution and sentencing, or as a way to allow those who are incarcerated to be held accountable and become more successful on parole.

4. Summary of any minority views or opposition internal and/or external to the ABA which have been identified.

Restorative justice programs are widely supported when used in appropriate cases, and when care is taken to ensure that the parties are on equal footing and that their participation is voluntary.
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PART I. GENERAL PRINCIPLES

Standard 11-1.1 Definitions

For purposes of these Standards:

(a) **Case.** "Case" means the prosecution of the crimes charged, including sentencing, and the investigation leading to those charges.

(b) **Defense.** "Defense" includes every defense attorney who has participated in defending the case, members of their legal or investigative staff in the case, and the defendant.

(c) **Electronically Stored Information ("ESI").** "Electronically stored information" ("ESI") means any information created, recorded, stored, or utilized with digital technology.

(d) **Formal charging document.** "Formal charging document" means an information, indictment, or other document on the basis of which a defendant may be tried.

(e) **Oral Statement.** An "oral statement" of a person means the substance of any statement of any kind by that person, not reflected in a recorded statement.

(f) **Party.** "Party" means the prosecutor, the defense attorney, and the defendant.

(g) **Possession or control of the defense.** Something is in the "possession or control of the defense" when it is in the possession of the defense or any other individual or entity that is under the defense attorney’s direction or control.

(h) **Possession or control of the prosecution.** Something is in the "possession or control of the prosecution" when it is in the possession of the prosecution, any law enforcement agency that has participated in investigating or prosecuting the case, any other individual or entity that has participated in investigating or prosecuting the case at the direction or request of or by agreement with the prosecution or any law enforcement agency in the case.

(i) **Prosecution.** "Prosecution" includes any prosecutors in the case and other members of their legal or investigative staff.

(j) **Prosecutor.** "Prosecutor" includes every attorney who has participated in prosecuting the case.

(k) **Recorded Statement.** A "recorded statement" of a person includes:

   (i) any statement in writing that is made, signed or adopted by that person;

   (ii) a stenographic, mechanical, electronic, or other recording, or a transcription thereof, which is a substantially verbatim recital of an oral statement made by that person; and

   (iii) the substance of a statement of any kind made by that person that is embodied or summarized in any writing or recording, whether or not specifically signed or
adopted by that person. The term includes statements contained in police or investigative reports, but does not include attorney work product.

(l) The Defense Attorney. “The defense attorney” includes any defense attorney representing the defendant, and includes the defendant if the defendant is proceeding pro se.

Standard 11-1.2 Objectives of these Standards
Objectives of these Standards include:

(a) to promote a fair, accurate, and expeditious disposition of the charges;
(b) to provide the defendant with sufficient information to make an informed plea;
(c) to permit thorough preparation for and minimize unfair surprise at hearings and trial;
(d) to facilitate early identification and resolution prior to trial of any procedural, collateral, or constitutional issues;
(e) to effect economies in time, money, judicial resources, and professional skills by minimizing paperwork, avoiding repetitious assertions of issues, avoiding unnecessary motion practice, and reducing the number of separate hearings;
(f) to reduce interruptions and complications during trial and avoid unnecessary and repetitious trials;
(g) to protect the security of confidential, privileged, or personal information;
(h) to minimize the burden upon and protect the interests of victims, witnesses, and other third parties;
(i) to protect the safety of the community;
(j) to specify remedies for non-compliance that mitigate prejudice while minimizing disruption to the criminal proceeding, and provide that sanctions for non-compliance should be reserved for blameworthy behavior; and
(k) to protect the rights of the defendant.

Standard 11-1.3 Applicability
These Standards should be applied in all criminal cases. Discovery procedures may be more limited in cases involving minor offenses, provided the procedures are sufficient to permit the parties adequately to investigate and prepare the case, and to satisfy constitutional requirements.

PART II. DISCOVERY OBLIGATIONS OF THE PROSECUTION AND DEFENSE
Standard 11-2.1 Prosecutorial disclosure

(a) Obligation of the prosecutor to identify and gather information and material. As soon as practicable, the prosecutor should with reasonable diligence seek to identify and
gather all information and material relevant to the case, including information and material
described in subsection (c) of this Standard in the possession or control of the prosecution.

(b) Advise on continuing obligation. The prosecutor should with reasonable diligence
advise individuals and entities who may have information and material in the possession
or control of the prosecution of their continuing duty to identify, preserve, and disclose to
the prosecutor information and material relevant to the case.

(c) The prosecutor's general obligation to disclose to the defense. Subject to the
limitations in Standard 6.1(a) and any protective orders, and in compliance with the
timeframes provided in Standard 11-2.3, the prosecutor should disclose to the defense
the following information and material it has identified and gathered pursuant to
subsection (a) of this Standard, and permit inspection, copying, testing, and
photographing of disclosed documents or tangible objects:

(i) The date, time, and place of the offense(s) with which the defendant is charged.

(ii) All law enforcement records created in the case.

(iii) All recorded and oral statements of the defendant that relate to the case, and
all recorded and oral statements of any codefendant that the government intends
to introduce at trial or that contain information that is described in subsection xiii of
this section, and any documents relating to the acquisition of such statements.

(iv) The names and, if known, information sufficient to contact, all persons having
information relating to the case, together with all recorded statements of any such
person that relate to the subject matter of the case.

(v) Any tangible objects, including books, papers, documents, photographs,
electronically stored information, buildings, or places that were obtained from or
belong to the defendant.

(vi) Any additional tangible objects, including books, papers, documents,
photographs, electronically stored information, buildings, or places that pertain to
the case.

(vii) Any results or reports of tests or examinations of persons or physical evidence
made in the case, and all related data, calculations, and documentation created in
the case, including chain of custody documents, preliminary test or screening
results, bench notes, and underlying raw data produced during testing.
Additionally, where results or reports of tests or examinations of persons or
physical evidence are disclosed, the prosecutor should disclose to the defense
related documents such as laboratory protocols and manuals, if the defense
requests the documents and if the documents are not publicly available.

(viii) Criminal records, pending charges, or probationary status of the defendant or
of any codefendant.

(ix) Any material, documents, or information relating to lineups, showups, picture,
voice, or other identification procedures that pertain to the case.
(x) Any information, documents, or other materials relating to any governmental 
electronic surveillance of the defendant’s person, communications, possessions, 
activities, or premises, or to legal authorization of the surveillance, that pertains to 
the case.

(xi) Any information, documents, or other material relating to the acquisition of any 
tangible object the prosecutor intends to offer at trial that was obtained through a 
search or seizure.

(xii) Any material, documents, or information relating to

(1) any relationship between the prosecution or law enforcement agents 
who have participated in the case and any witness the prosecution intends to call 
that does or reasonably might create bias or the appearance of bias, or

(2) any benefit received by or promised to the witness.

(xiii) Any material or information that tends to negate the guilt of the accused, 
mitigate the offense charged or sentence, or impeach the prosecution’s witnesses 
or evidence. Where the prosecution provides the defense with voluminous 
discovery material and the prosecutor is aware that it contains such material or 
information, the prosecutor should identify that material or information.

(xiv) Where the prosecutor provides the defense with voluminous discovery 
material, as the prosecutor determines that specific material will be used in the 
prosecution’s case-in-chief the prosecutor should identify that material to the 
defense.

(d) The prosecutor’s obligation to make pre-hearing disclosures to the defense. 
Unless previously disclosed, the prosecutor should disclose to the defense the following 
information and material for a pre-trial hearing at which evidence or witnesses will be 
presented:

(i) Any record of convictions, pending charges, or probationary status known 
to the prosecution of any witness to be called by the prosecution.

(ii) All recorded statements of any witness to be called by the prosecution at 
the hearing that relate to the subject matter of the hearing.

(iii) Any tangible objects, including books, papers, documents, photographs, 
electronically stored information, buildings, or places that the prosecution 
intends to introduce as evidence at the hearing.

(iv) Any material or information known to the prosecutor to be inconsistent with 
or impeaching the prosecution’s representations or evidence in the hearing.

(v) With respect to each person from whom the prosecution intends to elicit 
expert testimony at the hearing, a curriculum vitae and a written description 
of the substance of the proposed testimony of the expert, the expert’s 
opinion, and the basis of that opinion. If the substance of the proposed 
testimony, the expert’s opinion, and the basis of that opinion are contained
in a disclosed expert report, the prosecutor is not required to create a written
description.

(vi) Any results or reports of tests or examinations of persons or physical
evidence that the prosecution intends to introduce as evidence at the
hearing, and all related data, calculations, and documentation created in the
case, including chain of custody documents, preliminary test or screening
results, bench notes, and underlying raw data produced during testing.
Additionally, where results or reports of tests or examinations of persons or
physical evidence are disclosed, the prosecutor should disclose to the
defense related documents such as laboratory protocols and manuals, if the
defense requests the documents and if the documents are not publicly
available.

(e) The prosecutor’s obligation to make pre-trial disclosures to the defense. Unless
previously disclosed, the prosecutor should disclose to the defense the following
additional information and material prior to trial:

(i) A list of persons the prosecution intends to call as witnesses at trial.

(ii) All recorded and oral statements of any jointly tried co-defendant.

(iii) Any record of convictions, pending charges, or probationary status known to
the prosecution of any witness to be called by either party at trial, to the extent not
previously disclosed.

(iv) With respect to each person from whom the prosecution intends to elicit expert
testimony at trial, a curriculum vitae and a written description of the substance of the
proposed testimony of the expert, the expert’s opinion, and the basis of that opinion, to
the extent not previously disclosed under subsections (c) or (d) of this Standard. If the
substance of the proposed testimony, the expert’s opinion, and the basis of that opinion
are contained in a disclosed expert report, the prosecutor is not required to create a
written description.

(v) A list of exhibits the prosecution intends to offer as evidence or use at trial.

(vi) Notification of the intent to use, and the substance of, any character, reputation,
or other-act evidence the prosecution intends to use at trial.

(f) Specification of basis for charges. If, following completion of disclosures under
subsections (c), (d), and (e) of this Standard, the defense is reasonably unable to
determine the factual or legal basis for the charges sufficiently to prepare a defense at
trial, the court should, upon a showing by the defense, order the prosecutor to specify
further the factual or legal basis for the charges.

(g) The prosecutor’s obligation to make pre-sentencing disclosures to the defense.
The prosecutor should disclose to the defense the following additional information and
material prior to sentencing:

(i) A list of persons it intends to call as witnesses at sentencing and, to the extent
not previously disclosed, information sufficient to contact the witnesses together with all
recorded statements of the witnesses that are within the possession or control of the prosecution and that relate to the subject matter of the testimony of the witness.

(ii) Any record of convictions, pending charges, or probationary status known to the prosecution of any witness to be called by either party at sentencing, to the extent not previously disclosed.

(iii) Any results or reports of tests or examinations of persons or physical evidence made in the case that the prosecution intends to introduce as evidence at sentencing to the extent not previously disclosed, and all related data, calculations, and documentation created in the case, including chain of custody documents, preliminary test or screening results, bench notes, and underlying raw data produced during testing. Additionally, where results or reports of tests or examinations of persons or physical evidence are disclosed, the prosecution should disclose to the defense related documents such as laboratory protocols and manuals, if the defense requests the documents and the documents are not publicly available.

(iv) With respect to any person from whom the prosecution intends to elicit expert testimony at sentencing, a curriculum vitae and a written description of the substance of the proposed testimony of the expert, the expert’s opinion, and the basis of that opinion, to the extent not previously disclosed under subsections (c), (d), or (e) of this Standard. If the substance of the proposed testimony, the expert’s opinion, and the basis of that opinion are contained in a disclosed expert report, the prosecutor is not required to create a written description.

(v) A list of exhibits the prosecution intends to offer as evidence or use at sentencing, and any tangible objects, including books, papers, documents, photographs, electronically stored information, buildings, or places that the prosecution intends to introduce as evidence at sentencing, to the extent not previously disclosed.

(vi) Notification of the intent to use, and the substance of, any character, reputation, or other-act evidence the prosecution intends to use at sentencing.

(vii) Any material or information provided by the prosecution to an individual responsible for conducting a pre-sentence investigation or preparing a pre-sentence report, in connection with that pre-sentence investigation or pre-sentence report.

(h) The prosecutor’s obligation to disclose discoverable third party information and material. If the prosecutor knows that information or material described in subsection (c) of this Standard exists and is in the possession or control of a known third party, and not in the possession or control of the prosecution, the prosecutor should disclose to the defense the existence and location of that information and material.

Standard 11-2.2 Defense disclosure

(a) The defense attorney’s obligation to make pre-hearing disclosures to the prosecution. The defense attorney should disclose to the prosecution the following
additional information and material for a pre-trial hearing in which evidence or witnesses will be presented:

(i) All recorded statements of any witness to be called by the defense at the hearing that relate to the subject matter of the testimony of the witness.

(ii) Any tangible objects, including books, papers, documents, photographs, electronically stored information, buildings, or places that the defense intends to introduce as evidence at the hearing.

(iii) Any results or reports of tests or examinations of persons or physical evidence made in the case, and all related data, calculations, and documentation created in the case, including chain of custody documents, preliminary test or screening results, bench notes, and underlying raw data produced during testing, that the defense intends to introduce as evidence at the hearing. Additionally, where results or reports of tests or examinations of persons or physical evidence are disclosed, the defense should disclose to the prosecution related documents such as laboratory protocols and manuals, if the prosecution requests the documents and the documents are not publicly available.

(iv) With respect to each expert whom the defense intends to call as a witness at the hearing, the defense should also furnish to the prosecution a curriculum vitae and a written description of the substance of the proposed testimony of the expert, the expert’s opinion, and the underlying basis of that opinion. If the substance of the proposed testimony, the expert’s opinion, and the basis of that opinion are contained in a disclosed expert report, the defense attorney is not required to create a written description.

(b) The defense attorney’s obligation to disclose defenses. The defense attorney should disclose to the prosecution the following information:

(i) When the defense intends to offer at trial any defense of justification or excuse recognized in the jurisdiction, or any defense recognized in the jurisdiction premised on the mental or physical capacity of the defendant, including:

   (a) Duress;
   (b) Necessity;
   (c) Entrapment;
   (d) Involuntary or voluntary intoxication;
   (e) Insanity;
   (f) Diminished mental capacity;
   (g) Public authority; and
   (h) Defense of self, others, or property

the defense attorney shall provide written notification of that intent, the names of and, if known, information sufficient to contact, witnesses other than the defendant
whom the defense intends to call in support of the defenses, and all recorded
statements of the witnesses.

(ii) If the defense intends to introduce evidence to prove an alibi, written notification
of that intent should include, in addition to the disclosure required by (b)(i), the
specific place or places at which the defendant claims to have been at the time of
the alleged offense.

(c) The defense attorney’s obligation to make pre-trial disclosures to the
prosecution. The defense attorney should disclose to the prosecutor the following
additional information and material and permit inspection, copying, testing, and
photographing of disclosed documents and tangible objects prior to trial:

(i) The names and, if known, information sufficient to contact all witnesses (other
than the defendant) whom the defense intends to call at trial and which have not
previously been disclosed, together with all recorded statements of any such witness that
are within the possession or control of the defense and that relate to the subject matter
of the testimony of the witness. Disclosure of the identity and statements of a person who
will be called for the sole purpose of impeaching a prosecution witness should not be
required until after the prosecution witness has testified at trial.

(ii) Any tangible objects, including books, papers, documents, photographs,
electronically stored information, buildings, or places that the defense intends to introduce
as evidence at trial. Disclosure of tangible objects that will be used for the sole purpose
of impeaching a prosecution witness should not be required until after the prosecution
witness’s direct testimony has concluded.

(iii) Any results or reports of tests or examinations of persons or physical evidence
made in the case that the defense intends to introduce as evidence at trial, and all related
data, calculations, and documentation created in the case, including chain of custody
documents, preliminary test or screening results, bench notes, and underlying raw data
produced during testing. Additionally, where results or reports of tests or examinations
of persons or physical evidence are disclosed, the defense should disclose to the
prosecution related documents such as laboratory protocols and manuals, if the
prosecution requests the documents and the documents are not publicly available.

(iv) With respect to each expert whom the defense intends to call as a witness at
trial, the defense should also furnish to the prosecution a curriculum vitae and a written
description of the substance of the proposed testimony of the expert, the expert's opinion,
and the underlying basis of that opinion, to the extent not previously disclosed pursuant
to Standard 11-2.2(a)(ii). If the substance of the proposed testimony, the expert’s opinion,
and the basis of that opinion are contained in a disclosed expert report, the defense
attorney is not required to create a written description.

(v) Notification of the intent to use, and the substance of, any character, reputation,
or other-act evidence the defense intends to use at trial, unless the evidence would reveal
testimony of the defendant. Disclosure of character, reputation, or other-act evidence
that will be used for the sole purpose of impeaching a prosecution witness should not be
required until after the prosecution witness’s direct testimony has concluded.
(vi) A list of exhibits the defense intends to offer as evidence or use at trial. Disclosure of exhibits that will be used for the sole purpose of impeaching a prosecution witness should not be required until after the prosecution witness has testified at trial.

(d) The defense attorney’s obligation to make pre-sentencing disclosures to the prosecution. The defense attorney should disclose to the prosecution the following additional information and material prior to sentencing:

(i) A list of any persons the defense intends to call as witnesses at sentencing and, to the extent not previously disclosed, information sufficient to contact the witnesses together with all recorded statements of the witnesses that are within the possession or control of the defense and that relate to the subject matter of the testimony of the witness.

(ii) Any results or reports of tests or examinations of persons or physical evidence made in the case that the defense intends to introduce as evidence at sentencing to the extent not previously disclosed, and all related data, calculations, and documentation created in the case, including chain of custody documents, preliminary test or screening results, bench notes, and underlying raw data produced during testing. Additionally, where results or reports of tests or examinations of persons or physical evidence are disclosed, the defense should disclose to the prosecution related documents such as laboratory protocols and manuals, if the prosecution requests the documents and the documents are not publicly available.

(iii) With respect to each person from whom the defense intends to elicit expert testimony at sentencing, a curriculum vitae and a written description of the substance of the proposed testimony of the expert, the expert’s opinion, and the basis of that opinion, to the extent not previously disclosed. If the substance of the proposed testimony, the expert’s opinion, and the basis of that opinion are contained in a disclosed expert report, the defense attorney is not required to create a written description.

(iv) A list of any exhibits the defense intends to offer as evidence or use at sentencing, and any tangible objects, including books, papers, documents, photographs, electronically stored information, buildings, or places that the defense intends to introduce as evidence at sentencing, to the extent not previously disclosed.

(v) Notification of the intent to use, and the substance of, any character, reputation, or other-act evidence the defense intends to use at sentencing.

(vi) Any material or information provided by the defense to an individual responsible for conducting a pre-sentence investigation or preparing a pre-sentence report, in connection with that pre-sentence investigation or pre-sentence report.

Standard 11-2.3 Timing of discovery

(a) Discovery initiation and time limits. Discovery should be initiated as early as practicable. Each jurisdiction should adopt time limits within which discovery should be performed at each stage of a criminal case.

(b) Motion to change timing of disclosure. Upon motion by either party, if the court finds that there is good cause to extend or shorten any specified time limits, the court should enter an order doing so. The court’s order should consider any agreements made
as described in Standard 3.1. However, in all cases, disclosures should be made in sufficient time for each party to use the disclosed information to adequately prepare for hearings, the entry of a plea, trial, or sentencing.

(c) Disclosure in stages for pre-trial, trial, and post-trial use. Unless the court otherwise orders, disclosure should occur within the following time frames.

(i) Disclosure of information to the defense. Notwithstanding other timing provisions, the prosecutor should disclose to the defense information that tends to negate the guilt of the accused, mitigate the offense charged or sentence as soon as practicable after the items have been identified and gathered.

(ii) Disclosure at first appearance. At the first appearance before a judicial officer where a prosecutor is present, the prosecutor should disclose information and material relating to the release determination that are in the prosecutor’s possession. If a plea occurs at first appearance the prosecutor should make the disclosures described in subsection (ix) of this Standard.

(iii) Prosecution general disclosure. Within [14 days] of the filing of the formal charging document, the prosecutor should disclose to the defense all items listed in Standard 11-2.1(c). However, if the defendant is in custody, such disclosure should occur within [28 days] of the custody determination or [14] days of filing of the formal charging document, whichever is sooner.

(iv) Defense disclosure of defenses. Within [21 days] of the prosecutor’s disclosure under subsection (c)(iii), the defense attorney should disclose to the prosecutor all items listed in Standard 11-2.2(b).

(v) Prosecution responsive disclosure. Within [14 days] of the defense’s disclosure under subsection (iv) of this Standard, the prosecutor should disclose any previously undisclosed information or material the prosecution intends to use, or witnesses it intends to call, all recorded statements of the witnesses, and, if known, information sufficient to contact those witnesses, to respond to defenses disclosed.

(vi) Prosecution and defense pre-hearing disclosure. As soon as practicable after a pre-trial hearing is ordered, the party bearing the initial burden at the hearing should disclose to the opposing party all items listed in Standard 11-2.1(d) or 11-2.2(d) to the extent not previously disclosed. As soon as practicable but in all cases prior to the hearing, the opposing party should disclose all items listed in Standard 11-2.1(d) or 11-2.2(a) to the extent not previously disclosed.

(vii) Prosecution pre-trial disclosure. No later than [21 days] prior to trial, the prosecutor should disclose to the defense all items listed in Standard 11-2.1(e).
(viii) **Defense pre-trial disclosure.** Within [7 days] of the prosecution’s disclosure under Standard 11-2.3(c)(vii), the defense attorney should disclose to the prosecutor all items listed in Standard 11-2.2(c).

(ix) **Prosecution disclosure before plea.** Prior to the entry of a guilty plea, the prosecutor should disclose to the defense information or material sufficient to support the charges in the proposed agreement, and information known to the prosecutor that tends to negate the guilt of the accused or mitigate the offense charged or sentence.

(x) **Sentencing disclosure.** Prior to sentencing, the prosecutor should disclose to the defense all previously undisclosed items listed in Standard 11-2.2(g). Following the prosecutor’s disclosure and prior to sentencing, the defense attorney should disclose to the prosecutor all previously undisclosed items listed in Standard 11-2.3(d) that are relevant to sentencing.

**Standard 11-2.4 The person of the defendant**

(a) After first appearance and upon motion by the prosecutor, with reasonable notice and opportunity to be heard to the defense, the court should, upon an appropriate showing, order the defendant to appear for the following purposes:

(i) to permit the taking of fingerprints, photographs, handwriting exemplars, or voice exemplars from the defendant;

(ii) to permit the taking of specimens of blood, urine, saliva, breath, hair, nails, or other materials of the body of the defendant;

(iii) for the purpose of having the defendant appear, move, or speak for identification in a lineup or try on clothing or other articles;

(iv) to submit to a reasonable physical or medical inspection of the body;

(v) to submit to a reasonable mental health examination; or

(vi) to participate in other reasonable and appropriate procedures.

(b) The motion and order pursuant to subsection (a) should specify the following information where appropriate: the authorized procedure, the scope of the defendant’s participation, and the scope, if any, of defense counsel’s participation, the name or job title of the person who is to conduct the procedure, and the time, duration, place, and other conditions under which the procedure is to be conducted.

(c) The court should issue the order sought pursuant to subsection (a) above if it finds that:

(i) the procedure specified may produce evidence that is material to the determination of the issues in the case;

(ii) the procedure is reasonable and will be conducted in a manner which does not involve an unreasonable intrusion of the body or an unreasonable affront to the dignity of the defendant; and
(iii) the request is reasonable and comports with applicable law.

**Standard 11-2.5. Additional disclosure upon motion**

The court in its discretion may, upon motion, require disclosure to the prosecution or defense of information or material related to the case but not specified in Standard 11-2.1 or 11-2.2, on a showing by the requesting party that the request is reasonable.

**Standard 11-2.6 Continuing obligation to disclose**

Each party has a continuing obligation to produce discoverable material to the other side. (a) If counsel discovers additional information or material that is subject to disclosure subsequent to the date when that disclosure was due, it should promptly notify opposing counsel of the existence of, and should promptly disclose, the additional information or material. (b) If counsel discovers that information or material that is subject to disclosure has been destroyed, lost, or otherwise have become unavailable before disclosure was made, it should promptly notify opposing counsel of the destruction, loss, or unavailability. Nothing in this Standard requires disclosure that would violate state or federal constitutions or ethical rules.

**Standard 11-2.7. Disclosure of intended use inadmissible**

The fact that a party has disclosed an intention to offer a specified defense or evidence or to call a specified witness should not be admissible against that party in any civil or criminal case.

**PART III. SPECIAL DISCOVERY PROCEDURES**

**Standard 11-3.1 Counsel should confer regarding substantial, complex, or non-routine discovery**

In cases involving substantial, complex, or non-routine discovery, counsel should meet and confer about the nature, volume, and procedures for producing discovery. After conferring, counsel should notify the court of discovery production issues or problems that they reasonably anticipate will significantly affect the case.

**Standard 11-3.2 Procedures for Electronically Stored Information**

(a) **Definitions.** For purposes of this Standard:

   (i) “ESI discovery” is Electronically Stored Information (“ESI”) that is discoverable.

   (ii) “Format” is the structure of a file that defines the manner in which data is created, used or saved within a digital file.

   (iii) “Media” are devices used to store and transmit electronically stored information, including CDs, DVDs, USB storage devices, and hard drives.

   (iv) “Process” or “processing” is any action taken to convert the format of, or otherwise alter a native file. For purposes of this definition, “native file” is a digital file in its native format, including metadata, “native format” is the original format in which a digital file is created by a software application, and “metadata” is structured, system-generated data that provides information about the digital file.
(b) **Objectives of procedures for ESI discovery.** In addition to the objectives listed in Standard 11-1.2, objectives of procedures for ESI discovery include:

(i) To realize the benefits of ESI in discovery;

(ii) To reduce unnecessary conflict and litigation over ESI;

(iii) To avoid unnecessary duplication of time and expense for the parties in the handling and using of ESI;

(iv) To protect a producing party from an unreasonable expenditure of resources, beyond expenditure for its own case preparation, in processing ESI;

(v) To ensure the reasonable usability of ESI;

(vi) To ensure the reasonable integrity of ESI;

(vii) To prevent unauthorized or unlawful dissemination of ESI that is confidential, private, privileged, or sensitive;

(viii) To avoid unnecessary burdens on third parties.

(c) **Format of discovery.**

(i) A party should, where practicable, and subject to subsections (c)(ii), (iii), and (iv), and subsection (e) of this Standard, select a reasonably usable format for production.

(ii) ESI received from third parties should ordinarily be produced in the format in which it was received.

(iii) ESI from the prosecution’s or defense’s records should ordinarily be produced in the format in which it was maintained.

(iv) Where a producing party elects to process ESI, including processing to create a more usable format, the results of that processing should, unless it constitutes information or material that may be withheld under Standard 11-6.1, be produced in discovery along with the underlying ESI.

(d) **Transmitting discovery.** The party producing ESI discovery should provide the receiving party with a general description of what is being transmitted, and should maintain a record of what was transmitted. Any media should be labeled to identify, at least, the case name and number, the producing party, a general description of what the media contain, and a production date.

(e) **No unreasonable extra cost, time, or burden.** When producing ESI discovery, a party should not be required to take on unreasonable additional processing costs, time, or burden beyond what the party has already incurred or will incur for its own case preparation or discovery production.

(f) **Informal resolution of ESI discovery issues.** Before filing any motion addressing an ESI discovery issue, the moving party should confer with opposing counsel as described in Standard 11-4.3. If resolution of the dispute requires technical knowledge beyond what the parties possess, the parties should involve individuals with sufficient knowledge to understand the technical issues.
(g) **Security.** The parties should be mindful that ESI raises special security concerns because of its volume and ease of dissemination. Dissemination of ESI discovery should be limited to the parties and individuals necessary to the case. The parties should take reasonable measures to secure ESI against unauthorized access or disclosure. If ESI potentially includes confidential, private, or sensitive information, the parties should enter into an agreement to protect the ESI. Absent agreement, the producing party should seek a protective order from the court before producing the ESI. Any agreement or protective order should specify steps for handling confidential, private, or sensitive ESI materials after the matter has concluded.

(h) **Substantial or complex ESI discovery.**

(i) As soon as practicable after the start of discovery in a case involving substantial or complex ESI, the parties should confer about the nature, volume, and procedures for producing ESI. The parties should discuss the following matters:

1. What types of ESI exist;
2. Formats of production and the need, if any, for preservation of data and formats;
3. Transmission methods;
4. Confidentiality and security of ESI; and
5. Any other issues identified by the parties.

(ii) After they confer, the parties should notify the court of unresolved issues concerning ESI.

(iii) The parties should involve individuals with sufficient technical knowledge regarding ESI as needed in the discovery process.

(iv) If a party disclosing substantial ESI has created an organizing tool such as a table of contents or index for the ESI, the party should disclose the organizing tool unless it constitutes information or material that may be withheld under Standard 11-6.1.

**Standard 11-3.3 Obtaining nontestimonial information from a third party**

(a) A party seeking information or material in the possession or control of a third party should, when practicable, make a good faith effort to obtain the information or material from the third party voluntarily.

(b) If information or material in control of a third party cannot be obtained voluntarily, either party may move the court for compulsory process. Upon motion by either party, if the court finds that there is good cause to believe that the information or material sought may be material to the determination of the issues in the case, the court should, in advance of trial, issue compulsory process for the following purposes:

(i) To obtain documents and other tangible objects in the possession of a third party.
(ii) To allow the entry upon property owned or controlled by a third party. Such process should be issued if the court finds that the party requesting entry has met the applicable legal standard.

(iii) To obtain from a third party fingerprints, photographs, handwriting exemplars, or voice exemplars, or to compel a third party to appear, move or speak for identification in a lineup, to try on clothing or other articles, to permit the taking of specimens of blood, urine, saliva, breath, hair, nails, or other materials of the body, to submit to a reasonable physical or medical inspection of the body, or to participate in other reasonable and appropriate procedures. Such process should be issued if the court finds that:

1. The procedure is reasonable and will be conducted in a manner which does not involve an unreasonable intrusion of the body or an unreasonable affront to the dignity of the individual; and
2. The request is reasonable and comports with applicable law.

(c) The motion and the order should specify the following information where appropriate: the authorized procedure; the scope of participation of the third party; the name or job title of the person who is to conduct the procedure; and the time, duration, place and other conditions under which the procedure is to be conducted.

(d) The court should be sensitive to the interests of third parties in issuing compulsory process. A person whose interests would be affected by the compulsory process sought should have the right and a reasonable opportunity to move to quash or modify the order on the ground that compliance would subject the person to an undue burden, or would require that disclosure of material that is privileged, personal, confidential, otherwise protected from disclosure, or would otherwise be unreasonable.

Standard 11-3.4 Testing or evaluation by experts and preservation of evidence

(a) Upon motion, either party should be permitted to conduct evaluations or tests of physical evidence in the possession or control of the other party which is subject to disclosure. The motion should specify the nature of the test or evaluation to be conducted, the names and qualifications of the experts designated to conduct evaluations or tests, and the material upon which such tests will be conducted. The court may make such orders as are necessary to make the material to be tested or examined available to the designated expert.

(b) Where feasible, the court should condition an order under subpart (a) so as to preserve the integrity of the material to be tested or evaluated.

(c) If the material on which evaluations or tests is requested is contraband material or a controlled substance, the entity having custody of the material may elect to have a representative present during the testing of the material.

(d) If either party intends to destroy or transfer out of its possession any objects or information otherwise discoverable under these standards, the party should give notice to the other party sufficiently in advance to afford that party an opportunity to object or take other appropriate action.
PART IV. MANNER OF CONDUCTING DISCOVERY

Standard 11-4.1 Manner of performing disclosure
Disclosure may be accomplished in any manner mutually agreeable to the parties. Absent agreement, counsel for the party having the burden of production should:

(a) notify opposing counsel that material and information, described in general terms, may be disclosed, received, inspected, obtained, tested, copied, or photographed during specified reasonable times; and

(b) make available to opposing counsel at the time specified such material and information and suitable facilities or other arrangements for disclosure, receipt, inspection, testing, copying, and photographing of such material and information.

Standard 11-4.2 Motion concerning the manner or place of production.
When, after conferring with opposing as described in Standard 11-4.3, a dispute concerning the manner of place of production, or any other arrangements for disclosing, receiving, inspecting, testing, copying, or photographing material and information has not been resolved between the parties, either party may make a motion seeking an order determining those discovery arrangements.

Standard 11-4.3 Informal resolution of discovery requests or disputes
Before filing any motion addressing a request or dispute, the moving party should confer with opposing counsel in a good-faith effort to resolve the request or dispute. Any motion addressing a discovery request or dispute should include a statement of counsel for the moving party relating that after consultation with the attorney for the opposing party the parties have been unable to resolve the request or dispute without court action.

Standard 11-4.4 Investigations not to be impeded
Attorneys for the parties and their staff should not advise persons (other than the defendant) who have relevant information or material to refrain from discussing the case with opposing counsel or showing opposing counsel any relevant material, nor should they otherwise impede opposing counsel’s investigation of the case.

PART V. DEPOSITIONS

Standard 11-5.1 Depositions necessary to preserve testimony
(a) Witnesses should testify in person at a hearing or trial whenever possible. After an indictment or information is filed, upon motion of either party, the court should order a deposition taken to preserve the testimony of a prospective witness other than the defendant, if the court finds that there is a substantial likelihood that the witness will be unavailable to testify and that it is necessary in the interest of justice to take the witness’s deposition.

(b) In the order for the deposition, the court may also require that any tangible objects, including books, papers, documents, photographs, or electronically stored information, not privileged, be produced by the deponent at the time and place of the deposition.
(c) The court should make provision for the defendant to be present at the taking of the deposition and should make such other provisions as are necessary to preserve the rights of the defendant, including the defendant’s right to confront witnesses and right to counsel.

(d) A deposition so taken and any evidentiary material produced at such deposition may later be introduced in evidence, subject to applicable rules of evidence. However, no deposition taken under this section should be used or read in evidence when the attendance of the deposed witness can be procured, except for the purpose of impeaching the testimony of the deponent.

(e) Depositions under this Standard should be taken before a judicial officer under oath, transcribed, preserved by video recording or if that is impracticable by audio recording, and conducted in accordance with such other rules for criminal depositions as a jurisdiction or the judge in the case may impose.

**Standard 11-5.2 Depositions necessary to prevent unjust surprise at trial**

(a) After an indictment or information is filed, upon motion of either party, the court should order the taking of a deposition upon oral examination of any person other than the defendant, concerning information relevant to the offense charged, but only on a substantial showing that:

(i) the name of the person sought to be deposed has been disclosed to the movant by the opposing party through the exchange of names of witnesses or has been discovered during the movant’s investigation of the case;

(ii) other information or materials disclosed to the movant in discovery do not summarize the relevant knowledge of the person to an extent adequate to prevent surprise at trial;

(iii) the person proposed to be deposed has refused to cooperate in giving a voluntary statement, despite reasonable efforts by the moving party; and

(iv) the taking of a deposition is necessary in the interest of justice.

(b) In determining whether to order the taking of a deposition under this Standard, the court should be sensitive to the interests of the person sought to be deposed.

(c) The order issued pursuant to subsection (a) should limit the scope of the deposition to information necessary to avoid unjust surprise at trial.

(d) The defendant may be present at the deposition unless the court orders otherwise for good cause shown.

(e) A deposition under this Standard should be admissible at a trial or hearing only for the purpose of contradicting or impeaching the testimony of the deponent as a witness, unless otherwise stipulated by the parties, ordered by the court, or admissible under governing rules of evidence.

(f) Depositions under this Standard should be taken before a judicial officer under oath, transcribed, and conducted in accordance with such other rules for criminal depositions as a jurisdiction or the judge in the case may impose.
Standard 11-5.3 Deponent opportunity to quash

A person whose deposition is sought under this Part should have the right to move to quash on the ground that compliance would subject the person to an undue burden, would require the disclosure of material that is privileged, confidential, personal, or otherwise protected from disclosure, or would otherwise be unreasonable.

Standard 11-5.4 Deposition procedures

Depositions under this Part should be taken before a judicial officer under oath, transcribed, and conducted in accordance with such other rules for criminal depositions as a jurisdiction or the judge in the case may impose. Depositions taken under Standard 11-5.2 should also be preserved by video and audio recording unless impracticable.

PART VI. LIMITATIONS ON DISCLOSURE

Standard 11-6.1 Automatic limitations

(a) A party may withhold the following information and material from disclosure under these Standards, unless the party whose obligation it is to disclose intends to offer the information and material at a hearing or trial:

i. Legal research, records, correspondence, reports, or memoranda made by the prosecutor or any defense attorney in the case, or members of their legal or investigative staff, to the extent that they contain the opinions, theories, or conclusions of the prosecutor, the defense attorney, or members of those attorneys’ legal or investigative staff;

ii. Personal identifying information of witnesses or victims except information sufficient to contact a witness as required by Standards 11-2.1(c) and 11-2.2(b), (c), and (d);

iii. Any information or material that is protected from disclosure by the state or federal constitutions, statutes, or other law; and

iv. The identity of a witness who provided information to the government in the case under a promise of confidentiality, and whose identity has been kept confidential.

(b) If a party withholds information or material from disclosure on the basis of 11-6.1(a)(iii) or (iv), counsel for the party should disclose to opposing counsel the category of information or material that is withheld, and the basis for the withholding.

(c) Nothing in this Standard permits the withholding of information or material required to be disclosed under other laws or where withholding will infringe the rights of the defendant.

(d) Nothing in this Standard prohibits a party from voluntarily disclosing information or material that is not subject to disclosure under these Standards, if such disclosure is otherwise permitted by law.

Standard 11-6.2 Protective orders.
(a) Upon motion of a party, or of any affected person, or on its own motion, and, except as provided below in subsection (d), after the opportunity for any non-moving party or affected person to be heard, the court may order that information or material otherwise subject to disclosure under these Standards be deferred, conditioned upon compliance with protective measures, or withheld, or make such other protective order as is appropriate.

(b) Before issuing a protective order under subsection (a), the court should balance the potential harm of disclosure to any person or entity against the potential prejudice that the proposed protective order would cause to a party or affected person. The court should issue a protective order only if the potential harm of disclosure is greater than the prejudice caused by the proposed protection, and should impose only those restrictions that are reasonable and necessary in relation to an articulated harm.

(c) Any showing under subsection (b) should, where feasible, be preserved in the record. The court may permit any evidentiary showing for a protective order, or any portion of such showing, to be made in camera (i.e., not in open court) or under seal.

(d) Upon request of a party, the court may permit any showing for a protective order to be made ex parte (i.e., without the other party present or served with the material supporting the showing in whole or in part), but only on a showing that such a procedure is necessary to fulfill the purpose of the requested limitation on discovery. A record should be made of an ex parte proceeding, and upon the entry of an order granting relief following an ex parte showing, all confidential portions of the record should be sealed, preserved in the records of the court, and made available to the appellate court in the event of an appeal.

Standard 11-6.3 Redaction

Even if parts of material or information are not subject to disclosure under these Standards, the parts subject to disclosure should be disclosed. The disclosing party should notify the opposing party that parts have been redacted, and those parts should be sealed, preserved in the records of the court, and made available to the appellate court in the event of an appeal. A redacting party should redact parts not subject to disclosure in a way that does not cause confusion to the opposing party, and if the basis for the redaction is not clear the redacting party should communicate the basis to the opposing party.

Standard 11-6.4 Use of materials

Any materials furnished to an attorney pursuant to these Standards, unless publicly disclosed at a hearing or trial, should be used only for the purposes of performing the attorney’s professional obligations or for such other purposes as the parties agree or the court orders, and should be subject to such other terms and conditions as the court may provide.

PART VII.NON-COMPLIANCE AND REMEDIES

Standard 11-7.1 Objectives of discovery remedies
Objectives of remedies for failure to comply with an applicable discovery obligation include:

(a) Ensuring prompt and full compliance with discovery obligations;
(b) Mitigating prejudice to a party, victim, witnesses, or the administration of justice;
(c) Minimizing disruption to the case and criminal proceeding; and
(d) Avoiding or remedying infringement of the rights of the defendant.

Standard 11-7.2 Motion to determine compliance

After conferring with opposing counsel as described in Standard 11-4.3, either party may move for a determination from the court that the opposing party’s withholding, redaction, or other limitation on disclosure is in violation of an applicable discovery obligation.

Standard 11-7.3 Available remedies

If a party fails to comply with a discovery obligation, the court should take such action as the interest of justice in the case requires. Any action taken should be preserved in the record of the proceedings. Remedies may include:

(a) cautioning the party that failed to comply;
(b) ordering compliance with the rule or order;
(c) ordering additional discovery;
(d) granting a continuance;
(e) reconsidering a pretrial detention decision;
(f) permitting a party to call or recall a witness;
(g) providing a curative instruction to the jury;
(h) prohibiting the party from calling a witness or introducing evidence;
(i) declaring a mistrial; or
(j) dismissing the charge with or without prejudice.

Standard 11-7.4 Considerations in selecting remedies

(a) Prior to ordering a remedy for failure to comply with an applicable discovery obligation, the court should consider:

i. the effect of the failure to comply on the opposing party or the administration of justice;
ii. the reason(s) for the failure to comply;
iii. the potential for additional failures to comply by the same party in the case;
iv. the feasibility of mitigating prejudice caused by the failure to comply;
v. prejudice to the interests of the parties, victims, witnesses, or others from a particular remedy; and

vi. any other relevant circumstances.

(b) The court should select the least severe remedy sufficient to accomplish the objectives of this Part.

PART VIII SANCTIONS FOR NON-COMPLIANCE

Standard 11-8.1 Objectives of discovery sanctions
Objectives of sanctions for failure to comply with applicable discovery obligations are:

(a) Punishing blameworthy disregard of discovery obligations; and

(b) Deterring disregard of discovery obligations.

Standard 11-8.2 Imposing sanctions on individuals
After notice and an opportunity for any non-moving party or affected person to be heard, the court may, consistent with its jurisdiction and authority under law, subject an individual responsible for a violation of a discovery obligation in the case to appropriate sanctions upon a finding on the record that the violation was intentional, knowing, or reckless. No sanction should be imposed for an attorney's failure to disclose information or material in the custody of another individual or entity if the attorney has diligently sought to identify and gather the information or material, and has diligently advised the individual or entity of the continuing duty to identify, preserve, and disclose discoverable information and material.

Standard 11-8.3 Imposing sanctions on entities
After notice and an opportunity for any non-moving party or affected person to be heard, the court may, consistent with its jurisdiction and authority under law, subject an office or other entity to appropriate sanctions upon a finding on the record that an entity's policy, custom, or pattern of practice, including the entity's failure to supervise or train, caused a failure to comply with a discovery obligation in the case.

Standard 11-8.4 Sanctions Not to Disrupt Criminal Proceeding
(a) The court should avoid disruption of the case in considering or imposing sanctions.

(b) The court should ordinarily delay considering and imposing sanctions until the conclusion of the case.

Standard 11-8.5 Considerations in Selecting Sanctions
(a) In addition to the requirements of Standard 11-8.2 and 11-8.3, in deciding whether to order a sanction and selecting a sanction for failure to comply with an applicable discovery obligation, the court should consider:

(i) the reason(s) for the failure to comply;
(ii) the effect of the failure to comply on the opposing party or the administration of justice;

(iii) other incidents of failure to comply by the same individual or entity in the case or in other cases;

(iv) the rights of the individual or entity; and

(v) any other relevant circumstances.

(b) The court should select the least severe sanction sufficient to accomplish the objectives of this Part.
**EXECUTIVE SUMMARY**

1. **Summary of the Resolution.**

   The resolution urges the adoption of the fourth edition black letter standards of the ABA Standards on Criminal Justice: Discovery.

2. **Summary of the issue that the resolution addresses.**

   The third edition of the Discovery Standards was adopted by the ABA in August 1994. These standards update the work of the third edition.

3. **Please explain how the proposed policy position will address the issue.**

   The updated black letter standards on discovery will assist criminal law practitioners and courts as part of the overall ABA Standards on Criminal Justice. The Standards are a 60-year project of the Section to provide aspirational standards to the legal profession.

4. **Summary of any minority views or opposition internal and/or external to the ABA which have been identified.**

   None have been identified except as indicated in the Report so that there is an understanding of the discussion of particular issues and resulting position.
RESOLVED, That the American Bar Association amends Rule 1.8(e) and related commentary of the ABA Model Rules of Professional Conduct as follows (insertions underlined, deletions struck through):

Model Rule 1.8: Current Clients: Specific Rules

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(e) A lawyer shall not provide financial assistance to a client in connection with pending or contemplated litigation, except that:

(1) a lawyer may advance court costs and expenses of litigation, the repayment of which may be contingent on the outcome of the matter; and

(2) a lawyer representing an indigent client may pay court costs and expenses of litigation on behalf of the client; and

(3) a lawyer representing an indigent client pro bono, a lawyer representing an indigent client through a nonprofit legal services or public interest organization and a lawyer representing an indigent client through a law school clinical or pro bono program may provide modest gifts to the client for food, rent, transportation, medicine and other basic living expenses if financial hardship would otherwise prevent the client from instituting or maintaining the proceedings or from withstanding delays that put substantial pressure on the client to settle. The legal services must be delivered at no fee to the indigent client and the lawyer:

(i) may not promise, assure or imply the availability of such gifts prior to retention or as an inducement to continue the client-lawyer relationship after retention;

(ii) may not seek or accept reimbursement from the client, a relative of the client or anyone affiliated with the client; and
(iii) may not publicize or advertise a willingness to provide such financial assistance to clients.

Financial assistance under this Rule may be provided even if the representation is eligible for fees under a fee-shifting statute.

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Comment

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Financial Assistance

[10] Lawyers may not subsidize lawsuits or administrative proceedings brought on behalf of their clients, including making or guaranteeing loans to their clients for living expenses, because to do so would encourage clients to pursue lawsuits that might not otherwise be brought and because such assistance gives lawyers too great a financial stake in the litigation. These dangers do not warrant a prohibition on a lawyer lending a client court costs and litigation expenses, including the expenses of medical examination and the costs of obtaining and presenting evidence, because these advances are virtually indistinguishable from contingent fees and help ensure access to the courts. Similarly, an exception allowing lawyers representing indigent clients to pay court costs and litigation expenses regardless of whether these funds will be repaid is warranted.

[11] Paragraph (e)(3) provides another exception. A lawyer representing an indigent client without fee, a lawyer representing an indigent client through a nonprofit legal services or public interest organization and a lawyer representing an indigent client through a law school clinical or pro bono program may give the client modest gifts if financial hardship would otherwise prevent the client from instituting or maintaining pending or contemplated litigation or administrative proceedings or from withstanding delays that would put substantial pressure on the client to settle. Gifts permitted under paragraph (e)(3) include modest contributions as are reasonably necessary for food, rent, transportation, medicine and similar basic necessities of life. If the gift may have consequences for the client, including, e.g., for receipt of government benefits, social services, or tax liability, the lawyer should consult with the client about these. See Rule 1.4.

[12] The paragraph (e)(3) exception is narrow. A gift is allowed in specific circumstances where it is unlikely to create conflicts of interest or invite abuse. Paragraph (e)(3) prohibits the lawyer from (i) promising, assuring or implying the availability of financial assistance prior to retention or as an inducement to continue the client-lawyer relationship after retention; (ii) seeking or accepting reimbursement from the client, a relative of the client or anyone affiliated with the client; and (iii) publicizing or advertising a willingness to
provide financial assistance to clients beyond court costs and expenses of litigation in connection with contemplated or pending litigation or administrative proceedings.

[13] Financial assistance may be provided pursuant to paragraph (e)(3) even if the representation is eligible for fees under a fee-shifting statute. However, paragraph (e)(3) does not permit lawyers to provide assistance in other contemplated or pending litigation in which the lawyer may eventually recover a fee, such as contingent-fee personal injury cases or cases in which fees may be available under a contractual fee-shifting provision, even if the lawyer does not eventually receive a fee.

[No other changes proposed in the commentary to this Rule except renumbering succeeding paragraphs.]
EXECUTIVE SUMMARY

1. **Summary of the Resolution.**

   The resolution asks the House of Delegates to add a narrow exception to Model Rule 1.8(e) that will increase access to justice for our most vulnerable citizens. Rule 1.8(e) forbids financial assistance for living expenses to clients who are represented without fee to the client in a pending or contemplated litigation or administrative proceeding. The proposed rule will permit modest financial assistance to indigent clients by lawyers representing those clients in litigation or administrative proceedings pro bono or through a nonprofit legal services or public interest organization or a law school clinical or pro bono program.

   The proposed rule would permit financial assistance for living expenses only to indigent clients, only in the form of gifts not loans, only when the lawyer is working pro bono without fee to the client, and only where there is a need for help to pay for life’s necessities. Permitted gifts are modest contributions for food, rent, transportation, medicine, and other basic living expenses if financial hardship would otherwise prevent the client from instituting or maintaining the proceedings or from withstanding delays that put substantial pressure on the client to settle. Similar exceptions, variously worded, appear in the rules of eleven U.S. jurisdictions.

   A lawyer may not: (1) promise, assure or imply the availability of financial assistance prior to retention or as an inducement to continue the client-lawyer relationship after retention; (2) seek or accept reimbursement from the client, a relative of the client or anyone affiliated with the client; or (3) publicize or advertise a willingness to provide financial assistance to clients.

2. **Summary of the issue that the resolution addresses.**

   ABA Model Rule of Professional Conduct 1.8(e) is at odds with the ABA’s goal of increasing access to justice. It prohibits lawyers from helping indigent clients with basic and essential living expenses such as food, clothing, shelter and medicine while a litigation or administrative proceeding is pending even where financial hardship prevents the client from instituting or maintaining the proceedings or from withstanding delays that put substantial pressure on the client to settle.

   The history, development, and commentary on the prohibition against financial assistance to litigation clients establishes two reasons for the prohibition, which are succinctly stated in Comment [10] to Rule 1.8. First, the prohibition prevents lawyers from having “too great a financial stake in the litigation.” Second, allowing assistance would “encourage clients to pursue lawsuits that would not otherwise be brought.”

   Because the assistance permitted by the proposed rule must be in the form of a gift, not a loan, there is no interest in recoupment that could affect the lawyer’s advice. Further, by enabling the most financially vulnerable clients to vindicate their rights in court within
the proposed rule’s restrictions, the amendment ensures equal justice under law, a core ABA mission. An exception for assistance permitted by the proposed rule is commonly referred to as a “humanitarian exception” to the prohibitions in Model Rule 1.8(e).

The proposed rule to add a humanitarian exception to Rule 1.8(e) has received support from a wide variety of pro bono, legal services and legal aid lawyers and from law school clinicians. This group includes approximately sixty lawyers in nonprofit organizations and legal services and legal aid offices, the Legal Aid Society in NYC—an office of more than 1200 lawyers, and clinical faculty at law schools nationwide. SCEPR and SCLAID have received support from the Society of American Law Teachers (SALT) and the National Legal Aid and Defender Association (NLADA). Further, in a letter to the ABA Board of Governors, the Association of Pro Bono Counsel (“APBCo”), a membership organization of nearly 250 partners, counsel, and practice group managers who run pro bono practices on primarily a full-time basis at more than 100 of the country’s largest law firms wrote, “APBCo supports the effort to modify the Model Rules and permit pro bono lawyers to help their indigent clients meet basic human necessities, such as food, rent, transportation and medicine during the course of the representation. In the context of pro bono representation, none of these kinds of charitable gifts present any concerns raised by the Model Rule, which is designed to prevent lawyers from providing financial assistance to clients in order to subsidize lawsuits or administrative proceedings in a way that encourages clients to pursue lawsuits that might not otherwise be brought and gives lawyers a specific financial stake in the litigation. Neither pro bono lawyers nor their firms profit from public interest representation; the kinds of limited financial assistance contemplated by the proposed amendment will in no way violate the intended policy.”

In addition, many ABA committees and entities involved in access to justice initiatives support the proposed rule. These include the cosponsor, the Standing Committee on Legal Aid and Indigent Defendants, the Diversity and Inclusion Center and its constituent Goal III entities, the Standing Committee on Pro Bono and Public Service, the Section of Civil Rights and Social Justice, the Commission on Homelessness and Poverty, the Commission on Domestic and Sexual Violence, the Law Students Division, the Standing Committee on Disaster Response & Preparedness, and the Standing Committee on Legal Assistance for Military Personnel.

While support for the proposed rule is deep and wide within the public interest community, the proposed rule does not require any lawyer to provide financial assistance for living expenses to indigent clients.

3. Please explain how the proposed policy position will address the issue.

The amendment to Model Rule 1.8(e) would eliminate the prohibition on providing indigent clients represented pro bono in litigation or administrative proceedings with modest financial assistance for basic necessities of life, e.g. food, clothing, shelter, and medicine, when financial hardship would otherwise prevent these clients from instituting or maintaining the proceedings or from withstanding delays that put substantial pressure on these clients to settle.
4. **Summary of any minority views or opposition internal and/or external to the ABA which have been identified.**

During our prefiling circulations of a draft resolution and report (on March 12 and 13, on April 20, and again in May 2020) the following committees noted their support for permitting modest financial assistance for basic living expenses to indigent clients represented pro bono in litigation and administrative proceeding but also offered general comments and specific amendments: the Steering Committee of the ABA’s Death Penalty Representation Project, the Committee on Business and Corporate Litigation of the Business Law Section, and the Standing Committees on (i) Professionalism, (ii) Interest on Lawyers’ Trust Accounts, (iii) Lawyers’ Professional Liability, (iv) Professional Regulation, and (v) Public Protection in the Provision of Legal Services.

SCEPR and SCLAID made amendments to the report and resolution as a result. We believe these changes address most of the concerns raised.

As is customary for both SCLAID and SCEPR, we will continue to work with all entities presenting concerns to ensure that all are heard and that every reasonable attempt at consensus is made.
RESOLVED, That the American Bar Association urges Congress to enact legislation authorizing one or more principal officers, who are appointed by the President and confirmed by the Senate, to review decisions of the Patent Trial and Appeal Board (PTAB) determining the patentability of any claim reviewed by the PTAB before such decisions become final decisions of the U.S. Patent and Trademark Office (USPTO), and that the legislation should also restore Title 5 removal protections for Administrative Patent Judges (APJs) of the PTAB.
EXECUTIVE SUMMARY

1. Summary of the Resolution

The Resolution calls for the Association to adopt policy urging Congress to pass legislation that authorizes one or more principal officers, who are appointed by the President and confirmed by the Senate in accordance with the Appointments Clause of the U.S. Constitution, to review decisions of the Patent Trial and Appeal Board (PTAB) of the U.S. Patent and Trademark Office (USPTO) before such decisions become the final decisions of the USPTO, and that restores Title 5 employment protections for the PTAB’s Administrative Patent Judges (APJs), in response to the severance of those protections in the Federal Circuit’s Arthrex decision.

2. Summary of the Issue that the Resolution Addresses

This report addresses the issue of creating a legislative solution to ensure that APJs of the PTAB are rendered inferior officers, rather than principal officers, under the Appointments Clause of the U.S. Constitution. U.S. Const. art. II, § 2, cl. 2. A principal officer is appointed by the President and confirmed by the Senate. Id. An inferior officer may be appointed by a principal officer who is the head of an agency. Id. The Director of the USPTO is a principal officer. 35 U.S.C. § 3(a)(1). Congress intended for APJs to be inferior officers. Id. § 6(a). However, in Arthrex, the Federal Circuit held that APJs are principal officers because the Director of the USPTO does not have sufficient authority to review and possibly reverse decisions of the PTAB before they become the final decisions of the agency, and the Director has insufficient power to remove APJs from office. Arthrex Inc. v. Smith & Nephew, Inc., 941 F.3d 1320, 1329-31, 1332-1334 (Fed. Cir. 2019), en banc rehearing denied, 953 F.3d 760 (2020). To remedy the determined constitutional defect with the appointment of APJs while preserving the adjudicative and appellate functions of the PTAB under the AIA, the Federal Circuit severed APJs’ statutory removal protections under Title 5, making APJs removable at will. Id. at 1338. Congress expressly intended for APJs to have Title 5 employment protections afforded to federal employees. See 35 U.S.C. § 3(c).

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

The proposed legislative solution directly addresses the Federal Circuit’s concern that “[n]o presidentially-appointed officer has independent authority to review a final written decision by the APJs before the decision issues on the behalf of the United States.” Arthrex, 941 F.3d at 1329. Authorizing one or more principal officers to review the PTAB’s decisions before they become the final decisions of the agency is sufficient to render APJs inferior officers, Arthrex, 941 F.3d at 1329, and would thus allow for the restorations of APJs’ Title 5 removal protections that
were severed in *Arthrex*, thereby providing APJs the decisional independence to adjudicate their cases.

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

None known.
RESOLVED, That the American Bar Association supports, in principle, a transparent administrative process or processes to remove trademark registrations from the U.S. Patent and Trademark Office’s Principal or Supplemental Register, provided that:

(a) invalidation of a targeted registration is conditioned on proof that the registered mark was not used in commerce by any of the following relevant dates: (1) the claimed date of first use; (2) the filing date of an amendment to allege use; or (3) date of registration;

(b) the USPTO independently verifies the evidence of such non-use;

(c) there is a clear definition of what qualifies as sufficient evidence to prove such non-use as of the relevant date;

(d) registrants domiciled in the United States are not disadvantaged vis-à-vis registrants domiciled outside the United States, including with regard to the timing of the process(es) and any mechanisms by which registrations are invalidated;

(e) such process(es) before the USPTO should be stayed in the event of an adversarial proceeding before a tribunal with competent jurisdiction in which there is a claim or defense that the registration should be cancelled on the ground of such non-use on or before the relevant date; and

(f) registrants receive the right to appeal adverse determinations by civil action or by appeal to the U.S. Court of Appeals for Federal Circuit, as set forth in 15 U.S.C. § 1071.
EXECUTIVE SUMMARY

1. Summary of the Resolution

   The proposed policy enumerates conditions necessary to ensure that possible expedited proceedings for the invalidation of federal trademark registrations are not abused. In particular, the conditions would ensure that (1) these proceedings apply equally to domestic and non-U.S. registrants, (2) the proceedings are transparent in identifying the petitioner, (3) there is a clear standard for the proof required to cancel a registration, (4) stays are provided in these proceedings when a corresponding federal court action is pending, and (5) these proceedings permit appeals to either the Court of Appeals for the Federal Circuit or a U.S. District Court.

2. Summary of the Issue that the Resolution Addresses

   Congress is proposing the creation of two new expedited proceedings to cancel a federal trademark registration. Absent certain safeguards, these proceedings being created to stem trademark registrations acquired through false statements may open up new avenues for malicious actors to frivolously challenge legitimately acquired trademarks registrations.

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

   The proposed policy would allow the ABA to support federal legislation authorizing the expedited invalidation of deadwood trademark registrations while also conditioning that support on the codification of certain safeguards to prevent abuse of the resulting proceedings.

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

   None known at this time.
RESOLVED, That the American Bar Association House of Delegates concurs in the action of the Council of the Section of Legal Education and Admissions to the Bar in making amendments dated August 2020 to Definitions, Standards, and Rules of the ABA Standards and Rules of Procedure for Approval of Law Schools, that change the approval process for distance education programs to a substantive change process (Standard 105 and Rule 24) as required by the U.S. Department of Education, rather than the current variance process (Standard 107).
EXECUTIVE SUMMARY

1. Summary of the Resolution

Under Rule 45.9(b) of the Rules of Procedure of the House of Delegates, the resolution seeks concurrence in the action of the Council of the Section of Legal Education and Admissions to the Bar in making amendments dated August 2020 to Definitions, Standards, and Rules of the ABA Standards and Rules of Procedure for Approval of Law Schools, that change the approval process for distance education programs to a substantive change process (Standard 105 and Rule 24) as required by the Department of Education, rather than the current variance process (Standard 107).

2. Summary of the Issue that the Resolution Addresses

The resolution addresses Definitions, Standards, and Rules of the ABA Standards and Rules of Procedure for Approval of Law Schools, that change the approval process for distance education programs to a substantive change process (Standard 105 and Rule 24) as required by the U.S. Department of Education, rather than the current variance process (Standard 107).

move the approval of distance education programs under substantive change. (Standard 105 and Rule 24) as required by the U.S. Department of Education, and remove it from the variance process (Standard 107).

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

The proposal moves the approval process for distance education programs to the substantive change process under Standard 105 and Rule 24 of the ABA Standards and Rules of Procedure for Approval of Law Schools, thus responding to the Department of Education’s communication to the Section that starting a distance education program is considered a substantive change and approval of a distance education program must be handled as a substantive change.

4. Summary of Minority Views

None.
RESOLVED, That the American Bar Association House of Delegates concurs in the action of the Council of the Section of Legal Education and Admissions to the Bar in making amendments dated August 2020 to Rule 2 of the *ABA Standards and Rules of Procedure for Approval of Law Schools*:

Rule 2. Council Responsibility and Authority with Regard to Accreditation Status
EXECUTIVE SUMMARY

1. Summary of the Resolution

Under Rule 45.9(b) of the Rules of Procedure of the House of Delegates, the resolution seeks concurrence in the action of the Council of the Section of Legal Education and Admissions to the Bar in making amendments dated August 2020 to Rule 2 of the ABA Standards and Rules of Procedure for Approval of Law Schools authorizing the Council to act quickly to address an emergency impacting multiple law schools—either regionally or nationally, by providing temporary relief from a rule or the requirements of a standard to allow law schools to respond to the emergency.

2. Summary of the Issue that the Resolution Addresses

The resolution addresses Rule 2 of the ABA Standards and Rules of Procedure for Approval of Law Schools, authorizing the Council to act quickly to address an emergency impacting multiple law schools—either regionally or nationally. This proposed amendment would permit the Council to provide temporary relief from a rule or the requirements of a standard to allow law schools to respond to an emergency. Such relief would be effective only for the duration of the extraordinary circumstance and only to the extent specifically provided.

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

The proposals amend the 2019-2020 ABA Standards and Rules of Procedure for Approval of Law Schools.

4. Summary of Minority Views

None.
RESOLVED, That the American Bar Association House of Delegates concurs in the action of the Council of the Section of Legal Education and Admissions to the Bar in making amendments dated August 2020 to Rules 2, 22, 24, 27, 29 and 39 of the ABA Standards and Rules of Procedure for Approval of Law Schools:

Rule 2. Council Responsibility and Authority with Regard to Accreditation Status
Rule 22. Application for Provisional or Full Approval
Rule 24. Application for Acquiescence in Substantive Change
Rule 27. Application for Approval of Foreign Program
Rule 29. Teach-Out Plan
Rule 39. Decision of the Proceeding Panel
EXECUTIVE SUMMARY

1. Summary of the Resolution

Under Rule 45.9(b) of the Rules of Procedure of the House of Delegates, the resolution seeks concurrence in the action of the Council of the Section of Legal Education and Admissions to the Bar in making amendments dated August 2020 to Rules 2, 22, 24, 27, 29, and 39 of the *ABA Standards and Rules of Procedure for Approval of Law Schools*.

2. Summary of the Issue that the Resolution Addresses

The resolution addresses Rules 2, 22, 24, 27, 29, and 39 of the *ABA Standards and Rules of Procedure for Approval of Law Schools*. The resolution addresses changes to the Rules required by new Department of Education regulations.

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

The proposals amend the 2019-2020 *ABA Standards and Rules of Procedure for Approval of Law Schools*.

4. Summary of Minority Views

None.
RESOLVED, That the American Bar Association House of Delegates concurs in the action of the Council of the Section of Legal Education and Admissions to the Bar in making amendments dated August 2020 to Standards 102, 103, and 105 of the ABA Standards and Rules of Procedure for Approval of Law Schools:

Standard 102. Provisional Approval
Standard 103. Full Approval
Standard 105. Acquiescence for Substantive Change in Program or Structure
EXECUTIVE SUMMARY

1. Summary of the Resolution

Under Rule 45.9(b) of the Rules of Procedure of the House of Delegates, the resolution seeks concurrence in the action of the Council of the Section of Legal Education and Admissions to the Bar in making amendments dated August 2020 to Standards 102, 103, and 105 of the ABA Standards and Rules of Procedure for Approval of Law Schools.

2. Summary of the Issue that the Resolution Addresses

The resolution addresses Standards 102, 103, and 105 of the ABA Standards and Rules of Procedure for Approval of Law Schools, and addresses changes necessary due to new Department of Education regulations.

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

The proposals amend the 2019-2020 ABA Standards and Rules of Procedure for Approval of Law Schools.

4. Summary of Minority Views

None.
RESOLVED, That the American Bar Association urges Congress and the Administration to require the Department of Veterans Affairs to remove regulatory barriers to full accreditation of Tribal Veterans Service Officers ("TVSOs") under 38 C.F.R. 14.627 and 38 C.F.R. 14.628, and, consistent with the federal trust responsibility for Indian tribes, provide sufficient federal funding for establishing and operating TVSOs in those instances where a tribal community is economically disadvantaged; and

FURTHER RESOLVED, That the American Bar Association urges that when the Department of Veterans Affairs promulgates rules and regulations governing agent accreditation or the administration of programs, benefits, treatment, and services for veterans on Tribal land, the proposals be culturally competent, acknowledge the status of federally-recognized tribes as domestic dependent sovereigns, and be consistent with prevailing laws of sovereignty.
EXECUTIVE SUMMARY

1. Summary of the Resolution.

This Resolution calls for the ABA to urge Congress to adopt legislation that would require the Department of Veterans Affairs (the “VA”) to remove existing regulatory barriers to full accreditation of Tribal Veterans Service Officers (“TVSOs”) and provide sufficient federal funding for establishing and operating TVSOs where a tribal community is economically disadvantaged. This Resolution further urges the VA to promulgate regulations that allow full accreditation of TVSOs employed by individual tribal communities that are consistent with existing laws of sovereignty and cultural competence.

2. Summary of the issue that the resolution addresses.

After military members separate or retire from the service, they are entitled to file claims with the VA to obtain the benefits they have earned. To navigate the VA process, many veterans enlist the help of an accredited representative who works for a Veterans Service Organization (“VSO”). A VSO is a private non-profit group recognized by the VA that advocates on behalf of veterans and provides veteran-specific resources. Each tribe and their veteran citizens are entitled to culturally-competent representation and meaningful access to VA benefits and services. However, current VA regulations provide obstacles preventing TVSOs from receiving VA accreditation, as tribal organizations are unable to meet the existing requirements, resulting in difficulty for native veterans to seek and obtain their benefits. This also fails to consider cultural competence, understanding that accredited TVSOs would be a beneficial and integral part of a tribal community.

3. Please explain how the proposed policy position will address the issue.

Native veterans need the help of accredited TVSOs. VA regulations establish uniform standards for private and governmental organizations for VA-recognition, but when applied to sovereigns such as Native tribes, the standards present unnecessary and insurmountable barriers. This prevents tribal entities from being recognized by the VA, leaving TVSOs with few if any reliable alternative routes for accreditation. This Resolution, if adopted, will permit the ABA to advocate for removing any regulations that unfairly impede tribal organization recognition by the VA for TVSO accreditation. Further, this Resolution will allow the ABA to advocate for the proper recognition of tribal authorities under the relevant VA regulations as sovereigns, consistent with the federal government’s trust obligation to recognized tribes, to be distinguished from other types of “organizations” that seek recognition from the VA.

4. Summary of any minority views or opposition internal and/or external to the ABA which have been identified.
There is no known opposition. The only external minority view to-date is from the VA, as VA regulations require that all entities seeking recognition by the VA must abide by the same set of standards.
RESOLUTION

1 RESOLVED, That the American Bar Association adopts the American Bar Association
EXECUTIVE SUMMARY

1. Summary of the Resolution.

   The American Bar Association Best Practices for Third-Party Litigation Funding surveys the types of alternative litigation funding and proposes best practices to be consulted and factors to be considered by attorneys seeking to explore or utilize litigation funding in dynamic regulatory, judicial, and arbitral environments.

2. Summary of the issue that the resolution addresses.

   Rules applicable to alternative methods of litigation financing are rapidly changing across multiple jurisdictions and in arbitral forums. The Resolution notes areas to be considered by attorneys considering litigation funding, including best practices to avoid ethical pitfalls, protect information otherwise covered by the attorney-client privilege and work product doctrine, and otherwise maintain client confidences.

3. Please explain how the proposed policy position will address the issue.

   The proposed Best Practices summary surveys multiple jurisdictions and secondary materials and provides approaches to aid lawyers who have not yet participated in litigation funding.

4. Summary of any minority views or opposition internal and/or external to the ABA which have been identified.

   None known at present.
RESOLVED, That the American Bar Association urges all federal, state, local, territorial, and tribal governments to adopt policies and contractual provisions that prohibit conducting strip searches of children and youth, except in exceptional circumstances, where the searches are permitted only:

1. when the child or youth is in custody;
2. when there is probable cause to believe that the child or youth possesses an implement that poses a threat of imminent bodily harm to themselves or others;
3. after all other less intrusive methods of discovering and removing the implement have been exhausted, including the use of alternative search techniques that can be performed while the child or youth is fully clothed; and
4. after the child or youth has been given notice, in a manner that is consistent with the child’s or youth’s primary language and developmental stage, and that takes into account accommodations for disability, that they will be searched and that they have the opportunity to reveal any implement they are carrying instead of being searched; and

FURTHER RESOLVED, That the American Bar Association urges all federal, state, local, territorial, and tribal governments to adopt policies and contractual provisions that require that, if the child or youth must be strip-searched, the search is conducted in a manner that respects the sexual orientation and gender identity of the child or youth and is the least intrusive manner possible; and
FURTHER RESOLVED, That the American Bar Association urges all federal, state, local, territorial, and tribal governments to adopt policies and contractual provisions prohibiting body cavity searches of children and youth; and

FURTHER RESOLVED, That the American Bar Association encourages court systems, lawyers, law schools, and bar associations to promote awareness of the harmful effects of strip searches and body cavity searches of children and youth, including trauma and re-victimization.
EXECUTIVE SUMMARY

1. Summary of the Resolution.

This Resolution urges all federal, state, local, territorial, and tribal governments to adopt policies and contractual provisions that prohibit conducting strip searches of children and youth, except in exceptional circumstances. The Resolution is based on evidence that strip searches are harmful and cause trauma to children and youth, and especially to those children and youth who have previously been victimized. For this reason, the Resolution prohibits strip searches except when all of the following conditions are met: (1) the child or youth is in custody; (2) there is probable cause to believe that the child or youth possesses an implement that poses a threat of imminent bodily harm to themselves or others; (3) all other less intrusive methods of discovering and removing the implement have been exhausted, including the use of alternative search techniques that can be performed while the child or youth is fully clothed; and (4) the child or youth has been given notice, in a manner that is consistent with the child’s or youth’s primary language and developmental stage, and that takes into account accommodations for disability, that they will be searched and that they have an opportunity to reveal any implement they are carrying instead of being searched. The Resolution absolutely prohibits body cavity searches of children and youth. In addition, if a child or youth must be strip-searched, the search shall be conducted in a manner that respects the sexual orientation and gender identity of the child or youth and in the least intrusive manner possible. Finally, the Resolution urges the bar to promote awareness of the harmful and traumatizing effects of strip searches and body cavity searches on children and youth.

2. Summary of the issue that the resolution addresses.

Strip searches are demeaning, dehumanizing, undignified, humiliating, terrifying, unpleasant, embarrassing, and repulsive, signifying degradation and submission. Strip searches are perceived as particularly intrusive by children and youth. And a child or youth does not have to be completely naked to be negatively affected by a strip search, as underwear searches are embarrassing, frightening, and humiliating. Scientific and psychological research indicates that a traumatic strip search can have a lifelong impact on an adolescent’s developing mind. Indeed, because youth is a condition of life when a person may be most susceptible to psychological damage, children are especially susceptible to possible traumas from strip searches. As noted by the U.S. Supreme Court, adolescent vulnerability intensifies the patent intrusiveness of the exposure and can result in serious emotional damage. Research in adolescent development supports the legal conclusion that strip searches impact children and youth even more severely than adults.
Strip searches have customarily been used to discover contraband while individuals are incarcerated, but have become increasingly common in juvenile detention facilities as well as in other spaces and circumstances, including in schools, in immigration detention centers, during child welfare investigations, and prior to children and youth visiting incarcerated family members. While some state laws provide guidance on when and how strip searches can be performed on children and youth, individual agencies and facilities are often left to their own discretion to create policies.

3. Please explain how the proposed policy position will address the issue.

This Resolution addresses the issue by urging all federal, state, local, territorial, and tribal governments to adopt laws, regulations, policies, and contractual provisions that would: prohibit adults who interact with children and youth from conducting strip searches of children and youth, except in exceptional circumstances; stipulate that when strip searches are necessary that they be conducted in the least intrusive manner possible and with respect to the sexual orientation and gender identity of the child or youth; and prohibit body cavity searches. In addition, the Resolution urges the bar to promote awareness of the harmful and traumatizing effects of strip searches on children and youth.

4. Summary of any minority views or opposition internal and/or external to the ABA which have been identified.

None identified.
RESOLVED, That the American Bar Association approves the following paralegal education program: Calhoun Community College, Paralegal Studies Program, Huntsville, AL; and

FURTHER RESOLVED, That the American Bar Association reapproves the following paralegal education programs: University of California, Paralegal Certificate Program, Riverside, CA; University of Hartford, Paralegal Studies Program, West Hartford, CT; South Suburban College, Paralegal/Legal Assistant Program, South Holland, IL; Bay Path University, Legal Studies Program, Longmeadow, MA; Meredith College, Paralegal Program, Raleigh, NC; Truckee Meadows Community College, Paralegal/Law Program, Reno, NV; Trident Technical College, Paralegal Program, Charleston, SC; San Jacinto College, Paralegal Program, Houston, TX; Texas A&M University, Commerce, Paralegal Studies Program, Commerce, TX; Milwaukee Area Technical College, Paralegal Program, Milwaukee, WI; and

FURTHER RESOLVED, That the American Bar Association withdraws the approval of the following paralegal education programs: Samford University, Paralegal Studies Program, Birmingham, AL; Edison State Community College, Paralegal Studies Program, Piqua, OH; Vincennes University, Legal Studies Program, Vincennes, IN; and Robert Morris University, Paralegal Program, Chicago, IL; and

FURTHER RESOLVED, That the American Bar Association extends the terms of approval until the February 2021 Midyear Meeting of the House of Delegates for the following paralegal education programs: Community College of the Air Force, Air Force JAG School, Maxwell AFB, AL; Gadsden State Community College, Paralegal Program, Gadsden, AL; Phoenix College, Paralegal Studies Program, Phoenix, AZ; California State University, East Bay, Paralegal Studies Program, East Bay, CA; De Anza College, Paralegal Studies Program, Cupertino, CA; Fullerton College, Paralegal Studies Program, Fullerton, CA; University of California, Santa Barbara, Paralegal Studies Program, Santa Barbara, CA; West Los Angeles College, Paralegal Studies Program, Culver City, CA; Manchester Community College, Paralegal Studies Program, Manchester, CT; Wesley College, Legal Studies Program, Dover, DE; Nova Southeastern University, Paralegal Studies, Fort Lauderdale Davie, FL; Valencia College, Paralegal
Studies Program, Valencia, FL; University of North Georgia; Paralegal Program, Gainesville, GA; Elgin Community College, Paralegal Program, Elgin, IL; Illinois Central College, Paralegal Program, Peoria, IL; MacCormac College, Paralegal Studies Program, Chicago, IL; Harford Community College, Paralegal Program, Bel Air, MD; North Shore Community College, Paralegal Program, Danvers, MA; Suffolk University, Paralegal Studies Program, Boston, MA; Davenport University, Paralegal Program, Grand Rapids, MI; Henry Ford College, Paralegal Studies Program, Dearborn, MI; Madonna University, Paralegal Studies Program, Livonia, MI; North Hennepin Community College, Paralegal Program, Brooklyn Park, MN; Webster University, Legal Studies Program, St. Louis, MO; University of Providence, Paralegal and Legal Studies Program, Great Falls, MT; Atlantic Cape Community College, Paralegal Studies Program, Mays Landing, NJ; Mercer County Community College, Paralegal Studies Program, West Windsor, NJ; Bronx Community College, Paralegal Studies Program, Bronx, NY; Marist College, Paralegal Program, Poughkeepsie, NY; Westchester Community College (SUNY), Paralegal Studies Program, Valhalla, NY; Kent State University, Paralegal Studies Program, Kent, OH; Rhodes State College, Paralegal/Legal Assisting Program, Lima, OH; Clarion University, Paralegal Studies Program, Clarion, PA; Delaware County Community College, Paralegal Studies Program, Media, PA; Duquesne University, Paralegal Institute, Pittsburgh, PA; Manor College, Paralegal Program, Jenkintown, PA; Villanova University, Paralegal Program, Villanova, PA; Roger Williams University, Paralegal Studies Program, Providence, RI; Florence-Darlington Technical College, Paralegal Program, Florence, SC; National American University, Paralegal Studies Program, Rapid City, SD; Roane State Community College, Paralegal Studies Program, Harriman, TN; Amarillo College, Legal Studies Program, Amarillo, TX; El Centro College, Paralegal Studies Program, Dallas, TX; Lone Star College, Paralegal Studies Program, Houston, TX; American National University, Paralegal Program, Salem, VA; Northern Virginia Community College, Paralegal Studies Program, Alexandria, VA; Tacoma Community College, Paralegal Program, Tacoma, WA, and Mountwest Community and Technical College, Paralegal Studies Program, Huntington, WV.
EXECUTIVE SUMMARY

Submitting Entity: Standing Committee on Paralegals

Submitted By: Chris S. Jennison, Chair

1. Summary of the Resolution

This Resolution recommends that the House of Delegates grants approval to 1 paralegal education program, grants reapproval to 10 programs, withdraws the approval of 4 programs at the requests of the institutions, and extends the term of approval to 48 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 groups.
RESOLVED, That the American Bar Association urges Congress to re-authorize and fully fund the Violence Against Women Act (“VAWA”) and similar legislation that:

1. Preserves the protections approved in the 2013 reauthorization of VAWA, and continues to respond to emerging challenges and to the concerns from the field of expert professionals;

2. Improves services, minimizes bias, and prioritizes safety, autonomy, and support for all victims of gender-based violence, with a particular emphasis on the self-defined needs of marginalized and underserved groups, including victims who:
   a. are LGBTQ;
   b. are immigrants, without regard for their legal status;
   c. are Indigenous;
   d. are persons of color;
   e. live with a disability, including mental/behavioral health disabilities and/or substance use disorders;
   f. are youth or elders;
   g. primarily speak a language other than English;
   h. are members of a religious minority;
   i. live in rural or frontier areas; or
   j. are or were incarcerated;

3. Enhances judicial, legal, and law enforcement tools that respond to domestic violence, dating violence, sexual assault, and stalking in a trauma-informed way, including by:
   a. recognizing tribal courts’ inherent jurisdiction over gender-based and related violence committed on tribal lands;
   b. restricting adjudicated abusers’ access to firearms; and
c. allowing for innovation in developing victim-defined alternatives to traditional justice responses;

4. Strengthens the healthcare system’s comprehensive and trauma-informed response to domestic violence, dating violence, sexual assault, and stalking;

5. Provides economic and housing opportunities and protections for victims of domestic violence, dating violence, sexual assault, and stalking, including non-discrimination protections; and

6. Implements evidence-based prevention and educational programs that encourage healthy relationships and teach how to respond to attitudes and behaviors contributing to sexual and domestic violence.
EXECUTIVE SUMMARY

1. Summary of the Resolution

This Resolution urges Congress to re-authorize and fully fund the Violence Against Women Act and similar legislation that seeks to support the existing law while continuing to be responsive to the needs of all survivors of gender-based violence.

2. Summary of the Issue that the Resolution Addresses

Reauthorization of VAWA has become more and more contentious over the years, resulting in the introduction of multiple competing reauthorization bills and marker bills in the House and Senate. Existing ABA policy supporting VAWA is not fine-tuned enough to allow the Association to take a position in support of one bill over another, forestalling its ability to weigh in on the national debate at the time when it is most necessary.

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

This policy provides more detailed guidance that the existing VAWA policy (which is 10 years old) does about the preferred content of any VAWA reauthorization bill or marker bill.

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

No internal opposition has been identified. External opposition would exclude immigrant and/or LGBTQ survivors from receiving federally funded services, would emphasize a criminal legal response to gender-based violence to the exclusion of other services and remedies, would refuse to acknowledge Tribal sovereignty, and would decline to enforce or expand existing federal gun restrictions for abusers.
RESOLVED, That the American Bar Association urges federal, state, local, territorial, and tribal governments to enact legislation and policies to require all health care providers—including facilities, physicians, physician assistants, residents, nurses, radiologists and sonographers, therapists, laboratory technicians, midwives, and health care students—to obtain specific informed patient consent in advance for all medically unnecessary pelvic examinations.
EXECUTIVE SUMMARY

1. **Summary of the Resolution**

   This resolution urges legislative and policy changes to prevent the performance of pelvic exams without specific and advance informed consent.

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

   Recent reporting has revealed a wide-spread practice of performing medically unnecessary pelvic examinations on unconscious patients without the patients’ knowledge or consent, often for the stated purpose of providing opportunities for health care professionals to “practice” their skills.

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

   Requiring that health professionals obtain specific informed consent before performing medically unnecessary pelvic examinations on unconscious patients protects patient autonomy and maintain trust between doctors and patients. It also reduces risk of personal injury litigation, ethics violations, or even criminal charges.

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 eight principles and accompanying commentary set forth in the U.S. Department of Justice December 15, 2015 guidance titled Identifying and Preventing Gender Bias in Law Enforcement Response to Sexual Assault and Domestic Violence; and

FURTHER RESOLVED, That the American Bar Association urges all federal, state, territorial, local and tribal law enforcement agencies in the United States to:

(1) adopt those same principles;

(2) provide periodic training to all law enforcement agency personnel to promote compliance with those principles; and

(3) engage in regular review of compliance efforts and make any necessary adjustments to improve compliance.
1. Recognize and address biases, assumptions and stereotypes about victims.

2. Treat all victims with respect and employ interviewing tactics that encourage a victim to participate and provide facts about the incident.

3. Investigate sexual assault or domestic violence complaints thoroughly and effectively.

4. Appropriately classify reports of sexual assault or domestic violence.

5. Refer victims to appropriate services.

6. Properly identify the assailant in domestic violence incidents.

7. Hold officers who commit sexual assault or domestic violence accountable.

8. Maintain, review and act upon data regarding sexual assault and domestic violence.
EXECUTIVE SUMMARY

1. **Summary of the Resolution**

   This resolution adopts the eight principles and accompanying commentary set forth in U.S. DOJ guidance regarding gender bias in policing, and urges law enforcement agency to adopt, provide training on, and monitor compliance with the principles.

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

   Gender bias in policing practices is a form of discrimination that may result in law enforcement agencies providing less protection to certain victims on the basis of gender, failing to respond to crimes that disproportionately harm people of a particular gender or offering reduced or less robust services due to a reliance on gender stereotypes. Gender bias, whether explicit or implicit, conscious or unconscious, may include police officers misclassifying or underreporting sexual assault or domestic violence cases, or inappropriately concluding that sexual assault cases are unfounded; failing to test sexual assault kits; interrogating rather than interviewing victims and witnesses; treating domestic violence as a family matter rather than a crime; failing to enforce protection orders; or failing to treat same-sex domestic violence as a crime. In the sexual assault and domestic violence context, if gender bias influences the initial response to or investigation of the alleged crime, it may compromise law enforcement’s ability to ascertain the facts, determine whether the incident is a crime, and develop a case that supports effective prosecution and holds the perpetrator accountable.

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

   Promoting well-informed and responsible guidance such at this will help to change the culture that prevents so many cases from being reported, properly investigated, or zealously prosecuted. Eliminating gender bias in policing practices is an integral component of combating sexual assault and domestic violence, and can have a real and immediate effect on the safety of individual victims. A swift and meaningful criminal justice response to violence against women and LGBTQ individuals is critical for preventing future victimization and arresting offenders can deter repeat abuses. Further, an appropriate law enforcement response not only fosters victim confidence, it also makes victims more likely to report future incidents.

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

   None.
RESOLUTION

1 RESOLVED, That the American Bar Association urges all national governments to observe, respect, and protect the independence of the International Criminal Court;
2
3 FURTHER RESOLVED, That the American Bar Association condemns threats by governments to the International Criminal Court and its officers and personnel in the performance of their duties.
EXECUTIVE SUMMARY

1. Summary of the Resolution

The resolution reaffirms the Association’s commitment to the independence of the International Criminal Court (“ICC”), and urges all national governments to observe, respect, and protect the independence of the ICC, and condemns governmental attacks on the ICC and its personnel.

2. Summary of the Issue that the Resolution Addresses

As illustrated in the report, the U.S. Secretary of State recently imposed visa restrictions against ICC officials and threatened financial and criminal sanctions against them and members of the Court’s professional staff, which threatens the ICC’s independence as a duly established international tribunal.

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

While taking no position on the merits of any case, the resolution will reaffirm the Association’s commitment to the ICC’s independence by urging all governments to observe, respect, and protect the ICC’s independence and refrain from attacks on its officers and personnel.

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

None received thus far.
RESOLVED, That the American Bar Association recognizes that effective reforms of legal systems that affect the fundamental rights of children and youth – including, but not limited to the child welfare, immigration, and juvenile justice legal systems – cannot be accomplished without active participation by individuals who experienced those systems as children and youth;

FURTHER RESOLVED, That the American Bar Association encourages attorneys, judges, advocates, legislators, bar associations, and law schools to promote effective, ongoing, and authentic engagement in legal system reform and advocacy efforts by individuals who have experienced those systems as children and youth;

FURTHER RESOLVED, That the American Bar Association encourages attorneys, judges, advocates, legislators, bar associations, and law schools to remove barriers to that engagement;

FURTHER RESOLVED, That the American Bar Association urges law schools, bar associations, law firms, and other professional organizations to create pathways for individuals with lived experience in legal systems that affect children and youth to pursue and succeed in legal and advocacy careers, both within youth-serving systems and more broadly in the legal profession; and

FURTHER RESOLVED, That the American Bar Association calls on organizations focused on improving legal systems that affect children and youth to incorporate individuals who experienced those systems as children into leadership positions, including recruiting them as staff members, managers, partners, or board members.
EXECUTIVE SUMMARY

1. Summary of the Resolution.

This Resolution recognizes that effective reforms of legal systems that affect the fundamental rights of children cannot be accomplished without active participation by individuals who experienced those systems as children and youth. It therefore encourages the legal community—attorneys, judges, advocates, legislators, law schools and bar associations—to promote effective, ongoing, and authentic engagement in legal system reform and advocacy efforts by individuals who have experienced those systems as children and youth and to address any barriers to that participation in reform and advocacy efforts. The Resolution also encourages legal organizations to incorporate authentic youth voice and lived experience in leadership positions, such as staff members, managers, partners, directors, and board members. So that individuals with lived experience in legal systems that affect children and youth may pursue and succeed in legal and advocacy careers, the Resolution urges the legal community to create pathways for that to happen.

2. Summary of the issue that the resolution addresses.

This Resolution the all-too-common absence of meaningful participation in system reform efforts by individuals with lived experience as children and youth in those systems. When youth engagement is conducted informally without the support of experienced organizations, the risks of unintended consequences, such as misappropriation of story and tokenism, are high.

3. Please explain how the proposed policy position will address the issue.

This Resolution and Report is designed to help the legal community – including attorneys, judges, legislators, bar associations, and law schools – understand the importance of working thoughtfully with organizations that have youth engagement expertise. It reflects recommendations and extensive input from several organizations across the country who have developed authentic youth engagement programs.

4. Summary of any minority views or opposition internal and/or external to the ABA which have been identified.

None have been identified.
RESOLUTION

RESOLVED, That the American Bar Association urges federal, state, local, tribal, and territorial governments to enact legislation that requires law enforcement agencies to keep records of all instances in which lethal force is used, by maintaining the data on the demographics of all persons against whom lethal force is used, including but not limited to race, color, national origin, age, gender, apparent religion, the presence of mental or physical disability, whether the person was fleeing at the time, whether the individual possessed a weapon (including the type of weapon), and whether a body camera was used;

FURTHER RESOLVED, That the American Bar Association urges federal, state, local, tribal, and territorial governments to enact legislation requiring the appointment of a fully independent special prosecutor whenever a person’s death occurs in the custody of or during an encounter with a police or other law enforcement officer acting in the officer’s official capacity; and

FURTHER RESOLVED, That the American Bar Association urges federal, state, local, tribal, and territorial governments to enact legislation that requires a showing of objective reasonable necessity to establish a defense in criminal cases involving lethal force use by a police or other law enforcement officer.
EXECUTIVE SUMMARY

1. Summary of the Resolution

The ABA urges federal, state, local, territorial, and tribal governments to enact legislation requiring the appointment of an independent special prosecutor that has no association with or dependence on police in any jurisdiction, enact legislation that requires law enforcement agencies to keep records of instances in which lethal force is used and enact legislation that increases the burden of proof for a defense to a police-involved killing to reasonable objective necessity.

2. Summary of the Issue that the Resolution Addresses

In cases involving police violence, prosecutors cannot and should not rely on the police to investigate themselves but should rely rather on an independent prosecutor.

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

The proposed policy position addresses the issue by calling for independent investigators in law-enforcement-involved shootings and establishing that a defense in an officer involved killing should be based on the standard of reasonable objective necessity.

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

None have been identified.
AMERICAN BAR ASSOCIATION
SECTION OF CIVIL RIGHTS AND SOCIAL JUSTICE
SECTION OF STATE AND LOCAL GOVERNMENT LAW
COMMISSION ON HOMELESSNESS & POVERTY

REPORT TO THE HOUSE OF DELEGATES

RESOLUTION

RESOLVED, That the American Bar Association urges federal, state, local, territorial and tribal governments to:

a) adopt and enforce fair lending laws and other federal, state and local laws targeting unfair or deceptive acts or practices to address discrimination in vehicle sales and financing markets;
b) adopt laws and policies that promote the adoption of an enhanced nondiscrimination compliance system for a vehicle loan or a flat percentage fee for dealer compensation; and
c) adopt legislation requiring the timely notice and disclosure of pricing of add-on products by dealers on each vehicle through reasonable means, such as a pricing sheet and/or website prominently displayed and available at its location, before a consumer negotiates to purchase a vehicle;

FURTHER RESOLVED, That the American Bar Association urges Congress to amend the Equal Credit Opportunity Act, 15 U.S.C 1691, to require documentation and collection of the applicant’s race, gender and national origin for vehicle credit transactions, through applicant voluntary self-identification using disaggregated racial and ethnic categories, made available through a Demographic Information Addendum, or some equivalent measurement;

FURTHER RESOLVED, That the American Bar Association encourages state, local, territorial and tribal bar associations to offer educational programming and materials to lawyers and consumers to help them understand and navigate purchases and financing of vehicles and understand consumers’ legal rights with respect to such purchases and loans.
EXECUTIVE SUMMARY

1. Summary of the Resolution

The resolution urges Congress to amend the Equal Credit Opportunity Act to require documentation and collection of the applicant’s race, gender or national origin for non-mortgage credit transactions specifically for vehicle transactions; it urges Congress and all state, local, territorial, and tribal legislative bodies and governmental agencies to adopt and enforce laws and policies that require an enhanced nondiscrimination compliance system for a vehicle loan or consider reducing dealer discretion by placing limits on dealer markup and to adopt legislation requiring the timely notice and disclosure of pricing of add-on products by dealers on each vehicle through reasonable means before a consumer negotiates to purchase a vehicle; and encourages education of lawyers and consumers about purchases and financing of vehicles and consumers’ legal rights to such purchases and loans.

2. Summary of the Issue that the Resolution Addresses

The resolution addresses the highly discriminatory practices and impacts to many consumers of color, gender, national origin, and low-income, that arise in auto lending and sale of auto add-on products. Consumers are burdened with interest-rate markups on loans that have no relation to their credit-risk, and often relate to prejudices and discriminatory actions. The resolution also addresses the issue of insufficient data available on credit applicants to identify potential discriminatory impact. Such data is currently collected in the home mortgage market and this resolution would place the one trillion-dollar auto lending market on similar footing. Finally, the resolution addresses the lack of timely notice and transparency in the auto lending market, particularly in the pricing of add-on products, which is unacceptable when it represents the third largest consumer debt in America.

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

This policy will reaffirm the ABA’s commitment to ensuring the enforcement of fair lending laws to protect against discrimination, strengthen consumer protections in the auto lending and sale market, and promote economic justice. It will assist the work of consumer advocates, lawmakers, and public and private attorneys who diligently work to provide a fair and transparent economic market for all consumers, regardless of race, color, gender, national origin, or economic position.

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

At the federal level, various legislators have taken opposing viewpoints on the powers of the Consumer Protection Financial Bureau and whether expressions of policy articulated by the CFPB should be subject to congressional rule making
authority. As noted in the report, Congress approved Public Law 115-172, May 21, 2018, which invoked the Congressional Review Act to disapprove CFPB Bulletin 2013 -02 (March 21, 2013), which provided guidance on the use of discretion in dealer interest markup rates. The CFPB Rulemaking Agenda, Fall 2018, indicates that the CFPB is reexamining the requirements of the ECOA concerning the disparate impact doctrine in light of recent supreme court cases.

Internal to the ABA, the Business Law Section has not yet indicated it whether it will oppose or support the resolution, as of the time of filing.
RESOLVED, That the American Bar Association opposes all federal, state, local, territorial and tribal legislation, regulation, and agency policy that discriminates against transgender and non-binary people on the basis of gender identity and/or that imposes barriers to obtaining or providing medically necessary care to affirm an individual’s gender identity.
EXECUTIVE SUMMARY

1. **Summary of the Resolution**

This Resolution opposes all federal, state, local, territorial and tribal legislation, regulation, and agency policy that discriminates against transgender and non-binary people on the basis of gender identity and/or that imposes barriers to obtaining or providing medically necessary care to affirm an individual’s gender identity.

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

Legislation has been introduced in more than 20 states attempting to restrict access to gender-affirming healthcare, especially for minors. Transgender minors are more likely to suffer anxiety, depression, and substance abuse, and there is a well-documented risk of suicide without treatment. Healthcare options for transgender people are not widely available, and additional barriers make it most difficult for people without resources to access.

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

Regardless of the avenue the bills take to limit access, this resolution will deter legislators from introducing or advancing such dangerous bills, which interfere with the medical treatment and personal medical decisions belonging to the gender non-conforming patient. Policy makers have no place between doctor and patient and these bills demonstrate why. The ABA will be making a strong statement that the transgender community must be treated equally, and all gender nonconforming people are protected, by law, from discrimination in healthcare.

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

None known.
RESOLVED, That the American Bar Association urges federal, state, local, territorial, and tribal legislatures to enact legislation, and correctional and detention facilities for both adults and minors to enact policies requiring that all incarcerated persons are provided with the following:

a.) soap, paper towels, hand sanitizer, and facial tissues in sufficient quantities to prevent the transmission of infectious disease;
b.) personal protective equipment including personal sanitizing products and face masks that are effective in preventing existing and emerging infections in sufficient quantities to prevent the transmission of infectious disease; and
c.) sufficient facilities for hand washing, including unrestricted access to clean water and working sinks.
EXECUTIVE SUMMARY

1. Summary of the Resolution
This resolution urges federal, state, local, territorial, and tribal legislatures to enact legislation, and correctional and detention facilities to enact policy, to provide all incarcerated adults and minors with sufficient access to soap products, paper towels and facial tissues, clean water and adequate facilities for hand washing, and face masks and sanitizing products.

2. Summary of the Issue that the Resolution Addresses
In order to prevent the vast transmission of infectious disease, inmates, being in close quarters, will be able to practice proper hand and respiratory hygiene with adequate cleaning products and facilities.

3. Please Explain How the Proposed Policy Position Will Address the Issue
Currently, many correctional facilities have broken sinks, one sink provided for too many people, inadequate quantities of soap and paper towels, rusted pipes and sewage leaking into the water supply. This resolution addresses both the lack and/or shortage of supplies.

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 and enforce legislation directing law enforcement officials and election officials to establish a protocol where pretrial detainees, who are eligible to register to vote or vote in the jurisdiction in which they are detained are given the opportunity to register to vote and cast ballots in their respective federal, state, and local elections; and

FURTHER RESOLVED, That the American Bar Association urges federal, state, local, territorial and tribal governments to promulgate and enforce regulations that facilitate the participation of such pretrial detainees in all federal, state, local, and special elections, including the ability to register to vote, obtain a ballot, and have that ballot delivered to the appropriate elections office.
EXECUTIVE SUMMARY

1. Summary of the Resolution

This resolution calls for law enforcement and election officials to establish protocols whereby eligible pretrial detainees will be able to register and vote in the jurisdiction where they are confined, and for governmental entities to promulgate regulations to facilitate the participation of pretrial detainees in the electoral process, including registration, voting, and the delivery of ballots to the appropriate election office.

2. Summary of the Issue that the Resolution Addresses

This resolution addresses the extensive history of recognizing the fundamental and basic human right to vote by the United States, and calls attention to the various attacks against this very right in the past decades, particularly with respect to the disenfranchisement of pretrial detainees. This resolution also addressed the substantive equality issues at play for these eligible American voters who, in theory, possess the equal right to vote as well, but in practice, are physically and metaphorically barred from voting due to the deprivation of their voting rights without constitutional due process. Due to this nation’s history and modern patterns of mass incarceration which disproportionately target members of minority communities, those voting rights of Black, Hispanic, and other minority communities are most heavily at stake.

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

The proposed policy proposition will call direct attention to the erosion of the voting rights of pretrial detainees in states nationwide, and will also highlight the fundamental value of voting rights to this democracy. In outlining the need for pretrial detainee enfranchisement, this policy will also assign responsibility to jail administrators as authorized by local, federal, state, tribal and territorial governments to provide eligible voters being detained while awaiting trial with the necessary materials and instruction needed to vote and exercise their civil liberties.

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

No minority views have been identified or expressed.
RESOLVED, That the American Bar Association urges the United States Department of Defense to declare that: (a) HIV status alone has no impact on service members’ ability to fully execute their duties and is not a determinant of fitness for duty; and (b) HIV is not a medical condition that should disqualify a person from enlistment, appointment, commissioning, deployment or retention in the U.S. military.
EXECUTIVE SUMMARY

1. Summary of the Resolution.

This resolution urges the Department of Defense to recognize that: (a) HIV status alone has no impact on service members’ ability to fully execute their duties and is not a determinant of fitness for duty; and (b) HIV is not a medical condition that should disqualify a person from enlistment, appointment, commissioning, deployment or retention in the U.S. military.

2. Summary of the issue that the resolution addresses.

The US Military currently is following polices that discriminates against individuals living with HIV. Individuals who are otherwise qualified are barred from joining the US Military. Additionally, those who are serving in the US Military with HIV have been subject to restrictions on deployment, ascension within the US Military, and in some cases discharge.

3. Please explain how the proposed policy position will address the issue.

This resolution urges the US Military to change its outdated and discriminatory policies toward those living with HIV. The ABA will be making a strong statement that those living with HIV have a place in the US Military and should be able to serve, unrestricted, if they are otherwise qualified.

4. Summary of any minority views or opposition internal and/or external to the ABA which have been identified.

None known.
RESOLVED, That the American Bar Association urges that, in all states, territories and tribes, the highest courts or legislative bodies charged with the administration of justice, admission to the bar, or regulation of the legal profession, require that lawyers, judges, commissioners, referees, probation officers, and court personnel whose job requires interacting with the public receive periodic training regarding implicit biases that addresses, at minimum, the following subjects: sex, race, color, religion, ancestry, national origin, ethnic group identification, age, disability, medical condition, genetic information, marital status, sexual orientation, gender expression and gender identity; and

FURTHER RESOLVED, That the American Bar Association urges that, in all states, territories, and tribes, the highest courts or legislative bodies, or agencies and boards that license and regulate the medical profession or social service professions, require that medical professionals and social service professionals who work with the public receive periodic training regarding implicit biases that addresses, at minimum, the following subjects: sex, race, color, religion, ancestry, national origin, ethnic group identification, age, disability, medical condition, genetic information, marital status, sexual orientation, gender expression and gender identity.
EXECUTIVE SUMMARY

1. Summary of the Resolution

This Resolution urges the highest courts or legislative bodies of all states, territories, and tribes that are charged with the administration of justice, admission to the bar, or regulation of the legal profession, to require that lawyers, judges, commissioners, referees, probation officers and court personnel whose job requires interacting with the public, as well as those agencies, and boards that license and regulate the medical profession or social services professions, to receive periodic training regarding implicit biases that addresses, at minimum, the following subjects: sex, race, color, religion, ancestry, national origin, ethnic group identification, age, disability, medical condition, genetic information, marital status, sexual orientation, gender expression and gender identity.

2. Summary of the Issue that the Resolution Addresses

An expression of bias is a departure from a “neutral” attitude which would fairly allocate equal recognition to all persons —regardless of race, color, gender identification, sexual orientation, socio-economic status, physical and mental disabilities, or other potentially marginalized attributes. These biases may result in obstacles to employment, including barriers in the hiring process, mannerisms in social interactions, including the evaluation of facial expressions or body language, and perceptions of actions, including the influence on decision making relative to those actions. The debilitating effects of implicit biases decreases the possibility of the diversity of professionals in a given field and the equitable access of marginalized communities to programs and resources.

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

This Resolution proactively addresses and combats the effects of biases in professional and legal settings, in furtherance of the ABA’s long-standing commitment to eliminating bias and enhancing diversity, by ensuring implicit bias training for all of those included in the resolution.

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

None have been identified.
RESOLVED, That the American Bar Association urges federal, state, local, territorial, and tribal governments to:

- repeal laws that disenfranchise persons based upon criminal conviction;
- restore voting rights to those currently and formerly incarcerated, including those on probation, parole, or any other community-based correctional program;
- assure that no person convicted of crime is disenfranchised because of nonpayment of a fine, court costs, restitution or other financial obligations imposed as a result of a criminal conviction.

FURTHER RESOLVED, That the American Bar Association amends the Criminal Justice Standards on Collateral Sanctions and Discretionary Disqualification of Convicted Persons (3d Edition, 2004) as follows:

Standards 19-2.6 **Prohibited collateral sanctions**

- Jurisdictions should not impose the following collateral sanctions:
  - (a) deprivation of the right to vote.
EXECUTIVE SUMMARY

1. Summary of the Resolution

This resolution calls upon governments at all levels to repeal disenfranchisement laws based upon criminal conviction, to restore voting rights, both during and post-imprisonment, to those disenfranchised due to criminal conviction, and to assure that no person convicted of a crime is disenfranchised because of nonpayment of fees, fines, or restitution associated with that conviction. It further amends the Criminal Justice Standards on Collateral Criminal Justice Standards on Collateral Sanctions and Disqualification of Convicted Persons (3d Edition, 2004) to state that a jurisdiction should not deprive a prisoner of the right to vote, even during actual confinement.

2. Summary of the Issue that the Resolution Addresses

This resolution addresses the plight of millions of United States citizens who are deprived of their voting rights due to criminal conviction. While state laws vary, only Maine, Vermont, and Puerto Rico allow voting from prison. This resolution calls for re-enfranchisement of those convicted of crimes, both during and after their incarceration, during any period of probation or parole, and irrespective of any fees, fines, or restitution associated with the conviction.

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

The proposed policy addresses disenfranchisement and its role in voter suppression by offering legislation that restores the right to vote for persons convicted of a crime, whether they are currently or formerly imprisoned. This resolution recommends that convicted individuals be restored suffrage as it affords them the opportunity to make decisions that affect their futures and aids their re-entry into society.

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

Not at this time.
RESOLVED, That the American Bar Association urges federal, state, local, territorial, and tribal governments to use a considered and measured approach in adopting and utilizing virtual or remote court proceedings established as a result of the COVID-19 pandemic, prioritizing use of such procedures for essential proceedings and those cases in which litigants consent to the use of virtual or remote processes;

FURTHER RESOLVED, That the American Bar Association urges federal, state, local, territorial, and tribal governments to form appropriate committees, including representatives of all constituencies involved in or affected by the type of court or proceeding under consideration, to establish or review the use of virtual or remote court proceedings and make recommendations for procedures, revisions of procedures and best practices;

FURTHER RESOLVED, That the American Bar Association urges federal, state, local, territorial, and tribal governments to ensure that virtual or remote court proceedings guarantee equal access and meet standards of fundamental fairness and due process. Such proceedings must be tailored to the needs of participants and take into account the type of case and proceeding to be conducted, the participants involved, and whether participants are likely to be represented by counsel. To do this, jurisdictions should:

(1) Consider the ability of all participants to access and fully participate in the proceedings, including:
   a. Ensuring that participation options for virtual or remote court proceedings are free for participants and observers;
   b. Providing options concerning participation and permitting participants to select the means of participation best suited to them without prejudice;
   c. Allowing participants to alter their chosen means of participation for each proceeding;
   d. Providing necessary supports for those who, for financial, technological, language access, disability, or other reasons, may not be able to fully participate without assistance;
e. Ensuring that methods of participation reduce, to the fullest extent possible, any prejudice that might result from the circumstances of participation;

f. Ensuring that participants are not obligated or pressured to waive constitutional rights; and

(2) Enable and encourage full attorney-client relationships, including permitting private consultation both before and during court proceedings and guaranteeing the confidentiality of such communications, as well as access to other litigation assistance programs previously available;

FURTHER RESOLVED, That the American Bar Association urges federal, state, local territorial and tribal governments to provide advance notice of proceedings and ensure full and meaningful public access to virtual proceedings, while also protecting the privacy of those proceedings legally exempted from public access;

FURTHER RESOLVED, That the American Bar Association urges federal, state, local, territorial, and tribal governments to reintroduce in-person court options as soon as safely feasible as determined by public health officials; and

FURTHER RESOLVED, That the American Bar Association urges federal, state, local, territorial, and tribal governments to study the impacts of virtual or remote court procedures and take steps to halt, alter, or revise virtual or remote court procedures if such study suggests prejudicial effect or disparate impact on case outcomes.
EXECUTIVE SUMMARY

1. Summary of the Resolution

This Resolution seeks to encourage each jurisdiction employing virtual or remote court: (1) to establish committees to review procedures; (2) to take steps to ensure equal access, due process and fundamental fairness; (3) to further ensure that the public, including the media, has access to court proceedings unless an appropriate exception applies, in which case the privacy of the proceeding should be protected, and (4) to study the impact of these procedures for possible prejudicial effect or disparate impact on outcomes. The Resolution further urges jurisdictions to reintroduce in-person court options as soon as safely feasible as determined by public health officials.

2. Summary of the Issue that the Resolution Addresses

During the COVID-19 pandemic, courts have endeavored find ways to operate safely, while also ensuring that essential proceedings continue. In many jurisdictions, this has involved quickly setting up remote or virtual courts, using meeting technologies such as Zoom or Go to Meeting. Because these procedures were established in response to a crisis, time could not be taken to fully consider the impact of these procedures on access – both for participants and the public, privacy and attorney-client relationships.

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

The proposed Resolution urges jurisdictions to create committee(s), including all key stakeholders, to review existing or planned virtual or remote court procedures and provides a set of criteria for evaluation. The criteria prioritizes ensuring equal and full access for all participants, maintaining a robust attorney-client relationship, and ensuring public access or privacy of proceedings as appropriate for the type of hearing. The Resolution further calls on jurisdictions to reestablish in-person hearings as soon as feasible as dictated by public health considerations and to study or support the studying of procedures for possible bias or disparate impact and make adjustments accordingly.

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

No dissenting views have been articulated. The Resolution was crafted based on discussions with numerous other groups including individuals working with the COVID-19 Task Force and the Section on Civil Rights and Social Justice. However, due to time constraints, the language is being distributed to most groups in conjunction with this submission. SCLAID anticipates receiving significant comments and making changes to both the Resolution and Report in response to these comments.