The fate of immigration overhaul legislation remained uncertain this month following Senate passage June 27 of a comprehensive package and House committee action on separate targeted bills.

After the Senate’s 68-32 vote in favor of its bill, S. 744, ABA President Laurel G. Bellows applauded the Senate for making “bipartisan concrete progress” toward immigration reform. In correspondence to all senators June 26, Bellows said the bill, while not perfect, would implement steps toward accomplishing the goals of enhancing border and national security, realistically and humanely addressing the undocumented population and the need for immigrant labor, preserving family unity, and protecting the tradition of due process and judicial review.

Provisions in the bill supported by the ABA to enhance the fairness and efficiency of the immigration adjudication and detention system include the following: increasing access to counsel in immigration proceedings for the most vulnerable noncitizens such as children and the mentally disabled; increasing resources for the immigration court system; expanding the federal Legal Orientation Program; increasing the use of alternatives to detention; and enhancing oversight of conditions in detention facilities.

The bill also would implement a legalization program with a path to citizenship for undocumented immigrants currently residing in the United States and incorporate the ABA-supported DREAM Act, which provides an opportunity for young people brought to this country as children to earn legal status through higher education or service in the military.

Bellows called on the House to pass a comprehensive immigration bill, saying that the “nation does not need a perfect bill; we need a realistic strategy to bring millions out of the shadows.”

In the House, as a bipartisan group of representatives works on a plan to be unveiled following the August recess, separate immigration bills have garnered committee approval. None of the bills, however, address problems with the immigration adjudication and detention systems or provide a path to citizenship.

In addition to H.R. 1417, a bill approved by the House Homeland Security Committee that focuses on border security, the following bills have cleared the House Judiciary Committee:

• H.R. 2131, to raise the number of visas for highly skilled workers and allow more foreign graduates of U.S. graduate schools and immigrant entrepreneurs to obtain green cards;

see “Immigration,” page 8
# LEGISLATIVE BOXSCORE

<table>
<thead>
<tr>
<th>ABA LEGISLATIVE PRIORITY</th>
<th>HOUSE</th>
<th>SENATE</th>
<th>FINAL</th>
<th>ABA POSITION</th>
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<tbody>
<tr>
<td><strong>Gun Violence.</strong> S. 150 and H.R. 437 would limit the future sale and transfer of assault weapons and ammunition devices that hold more than 10 bullets. S. 54 and H.R. 452 seek to combat the practices of straw purchasing and illegal trafficking of firearms. S. 374 would strengthen background checks. S. 649, a comprehensive bill, includes numerous gun violence prevention provisions.</td>
<td>H.R. 437 was referred to the Judiciary Committee on 1/29/13; H.R. 452, on 2/4/13.</td>
<td>Judiciary Committee held hearings and approved S. 54 on 3/7/13; S. 53, on 3/11/13; and S. 374, on 3/12/13. Judiciary subc. held a hearing on 2/12/13. Senate began consideration of S. 649 on 4/8/13 but did not complete action.</td>
<td><strong>Supports steps to prevent gun violence by strengthening the nation’s gun laws.</strong></td>
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Appropriations committees approve fiscal year 2014 bills

In the first steps in a long budget battle, the House and Senate Appropriations Committees began approving fiscal year 2014 appropriations bills this month, including measures to fund the federal judiciary and the Legal Services Corporation (LSC).

Both House and Senate committees recognized the adverse impact that sequestration has had on the federal judiciary and included total judiciary funding of $6.54 billion and $6.67 billion, respectively, as part of the funding bills for Financial Services and General Government. The House committee approved its bill, H.R. 2786, on July 17, and the Senate committee cleared its draft legislation July 25.

Sequestration reduced overall judiciary funding earlier this year by nearly $350 million to below its fiscal year 2012 level. The committee-approved amounts would bring judiciary funding above its fiscal year 2013 level prior to the sequestration. The Senate bill conforms to the judiciary’s revised fiscal year 2014 request.

Both bills would help restore funding to the Defender Services Program, which provides criminal defense representation services to indigent defendants under the Criminal Justice Act, suffered disproportionately from sequestration due to the inflexibility of its budget. The Senate bill includes an appropriation of $1.1 billion for the program, an 11.4 percent increase over the current funding level. The House bill includes $1.06 billion. According to the Senate Appropriations Committee’s summary, its bill “restores severe cuts to Federal Defender offices and ensures that they are adequately staffed.” The Senate bill also includes a small adjustment to the hourly rate paid to panel attorneys; the House bill would not increase the rate.

Also approved by the committees this month were fiscal year 2014 funding bills for Commerce, Justice, Science (CJS) and related agencies.

The House committee, which cleared H.R. 2787 on July 10, includes $300 million for the LSC, a reduction of approximately 11.7 percent from the program’s current funding level of $340 million. The Senate bill, S. 1329, includes an LSC appropriation of $430 million, the level requested by President Obama and supported by the ABA.

The significant gap between the figures is explained by the fact that the House and Senate have not agreed upon a fiscal year 2014 budget resolution and are operating according to different budget allocations: the Senate amount is $94 billion more than the House.

During House committee markup of the CJS bill, Rep. Frank Wolf (R-Va.), who chairs the CJS appropriations subcommittee, and subcommittee Ranking Member Chaka Fattah (D-Pa.) voiced their desire to provide more funding to the LSC, but pointed out the severe budget constraints under which the House committee is working.

In a statement submitted to the House CJS appropriations subcommittee in March, ABA President Laurel G. Bellows urged increased funding for the LSC, emphasizing that limited resources prevent LSC grantees from responding to more than half the applications for legal assistance by eligible individuals.

No action is expected on the bills until after the August recess.

Employment non-discrimination bill approved

The proposed Employment Non-Discrimination Act (ENDA) garnered bipartisan support recently when the Senate Health, Education, Labor and Pensions Committee approved for the first time a bill to ban employment-related discrimination on the basis of sexual orientation or gender identity.

Three Republicans – Sens. Lisa Murkowski (R-Alaska), Orrin Hatch (R-Utah) and Mark Kirk (R-Ill.) – joined their Democratic colleagues to approve the legislation by a 15-7 vote on July 10. The bill, S. 815, is sponsored by Sen. Jeff Merkley (D-Ore.) and 53 cosponsors.

The ABA adopted policy in 1989 urging local and federal lawmakers to prohibit discrimination on the basis of sexual orientation, and in 2006 the ABA approved policy specifically urging enactment of legislation prohibiting discrimination on the basis of real or perceived gender identity in the areas of housing, employment and public accommodations.

In correspondence during the 112th Congress, then ABA President Wm. T. (Bill) Robinson III explained that studies indicate that transgender and other gender nonconforming people face severe discrimination in all public aspects of their lives, particularly employment. “Whenever any of our basic civil rights are diminished or marginalized unjustifiably on the basis of personal characteristics,” he wrote, “all of our basic civil rights are diminished and jeopardized.”

The ABA, he said, has an “underlying commitment to the ideal of equal opportunity – that no person should be denied basic rights because of membership in a minority group.”

Senate Majority Leader Harry Reid (D-Nev.) has indicated he hopes to bring S. 815 to the floor for a vote in the near future.
Justice and mental health collaboration bill ready for Senate floor

A bipartisan bill unanimously approved in June by the Senate Judiciary Committee would authorize the U.S. attorney general to award justice and mental health grants to improve mental health services for people who come into contact with the criminal justice system.

S. 162, sponsored by Sen. Al Franken (D-Minn.) with 17 Democrats and 13 Republicans, would amend and extend the Mentally Ill Offender Treatment and Crime Reduction Act of 2004 to authorize $40 million per year for five years beginning in fiscal year 2015. Up to 20 percent of the funding would be authorized for veterans programs.

Some of the funds would go toward establishing and expanding veteran treatment courts, which involve collaboration among criminal justice, veterans, and mental health and substance abuse agencies. These courts provide qualified veterans with intensive judicial supervision and case management, treatment services, and alternatives to incarceration. Other services provided by the treatment courts include housing, transportation, job training, education and assistance obtaining benefits. In addition to veteran treatment court programs, the bill would fund peer-to-peer services to help veterans obtain treatment recovery, stabilization or rehabilitation.

Funds also may be used to provide services, including legal assistance, to mentally ill veterans who have been incarcerated, and for training programs for law enforcement and other professionals on how to identify and respond to incidents involving such veterans.

The ABA, which supports the veteran treatment court provisions, has long recognized the special challenges faced by those experiencing mental health issues or related difficulties in the justice system.

In a July 19 letter to Franken, ABA Governmental Affairs Director Thomas M. Susman emphasized that involvement in the justice system can disqualify veterans from the benefits they need to accomplish a successful transition from military service to a productive role in society. “When these federal benefits are lost, justice-involved veterans must rely on the availability of community services that are often at capacity or that are scarce due to shrinking municipal budgets,” he explained.

“Veteran treatment courts, when properly implemented, can provide more intensive court and correctional supervision than existing court models, tapping into military culture and tools like peer-to-peer counseling to make lasting personal connections,” Susman said.

Other grants in the bill would go to correctional facilities to help identify and screen inmates who need mental health and substance abuse treatment and develop post-release transition plans that coordinate services and public benefits for those inmates. Employees would be trained to handle inmates with mental health disorders or co-occurring mental health and substance abuse disorders.

“We’ve been using our criminal justice system as a substitute for a well-functioning mental health system—we’ve sort of criminalized mental illness and addiction,” Franken said following the committee approval of the bill. “I’m pleased my legislation to make our communities safer and stronger by helping our justice and mental health systems work together is one step closer to becoming law.”

The legislation, supported by more than 240 organizations, was introduced as H.R. 401 in the House by Reps. Rich Nugent (R-Florida) and Bobby Scott (D-Va.) and 26 cosponsors.
ABA expresses support for proposed sentencing priorities

The ABA expressed support this month for several tentative priorities proposed by the U.S. Sentencing Commission for the 2013-14 amendment cycle, during which the commission will develop and submit guideline amendments to Congress by May 1, 2014.

The ABA recommendations were based on ABA policies after careful study by the association’s Criminal Justice Section Sentencing Committee, co-chaired by James Felman and Barry Boss. In comments submitted July 8 to Sentencing Commission Chair Patti B. Saris, ABA Governmental Affairs Director Thomas M. Susman highlighted the following commission priorities that the ABA maintains should be included for this year.

- Continuation of the commission’s work with Congress and other interested parties on statutory mandatory minimum penalties to implement the recommendations of the commission’s 2011 report for Congress, Mandatory Minimum Penalties in the Federal Criminal Justice System. The ABA has long supported the repeal of statutory mandatory minimum sentencing, Susman said, quoting from the 2004 ABA Justice Kennedy Commission, which recognized that such sentences should be avoided “so that sentencing courts may consider the unique characteristics of offenses and offenders that may warrant an increase or decrease in a sentence.”

- Continuation of the commission’s work on economic crimes, including a comprehensive multi-year study of §2B1.1 (Theft, Property Destruction and Fraud) and related guidelines. The ABA considers current sentencing for economic crimes to be overly punitive and in dire need of reform and has formed a Special Task Force on the Reform of Federal Sentencing for Economic Crimes to provide input to the commission.

- Possible consideration of amending the policy statement pertaining to compassionate release, in line with the ABA’s support for adoption of sentence reduction mechanisms to respond to extraordinary changes in a prisoner’s situation that arise after a sentence has become final. Susman pointed out that a recent Justice Department Inspector General report revealed that the existing Bureau of Prisons compassionate release program has been “poorly managed and implemented inconsistently, likely resulting in eligible inmates not being considered for release and in terminally ill inmates dying before their requests were decided.”

- Continuation of work to implement the recommendations in the commission’s December 2012 report to Congress, Federal Child Pornography Offenses, and to develop appropriate guideline amendments. In light of the report, the ABA maintains that child pornography should be a priority for the commission and emphasized ABA policy adopted in 2011. That policy urges the commission to complete a comprehensive assessment of the sentencing guidelines for child pornography offenses, taking into account the severity of each offense and factors pertaining to the current nature of the offenses, offenders, victims and the role of technology in these offenses.

One proposed priority that the ABA does not support, according to Susman, is the implementation of recommendations from the commission’s 2012 report on the continuing impact on federal sentencing of the Supreme Court decision in United States v. Booker, 543 U.S. 220 (2005), which rendered the U.S. Sentencing Guidelines advisory rather than mandatory.

Susman explained that the ABA believes that, rather than focusing on recommendations to eliminate sentencing disparities, the commission should work on the more significant problems of over-reliance on incarceration and excessive periods of incarceration for non-violent offenders.

Recidivism

continued from page 4

Inmates would be periodically re-evaluated to determine whether their risk assessments should be changed to allow them more opportunities to earn credits.

Those who are incarcerated for certain serious crimes such as child abuse, terrorism and violent felonies would not be eligible for the program.

Scott emphasized that “we will all benefit from the effort as we will all be less likely to be victims of crime as a result of the reduced recidivism this approach has shown time and again at the state level.” States with successful recidivism risk-assessment programs include Texas, Oklahoma, Ohio and North Carolina.

The ABA has been urging the federal government to follow the states’ lead in making changes to reduce both federal prison costs and overcrowding. In addition to expanding time credits, successful state reforms include increasing the use of probation and expungement of convictions of low-level offenders, instituting a review process to accelerate supervised release eligibility, and restoring proportionality to drug sentencing.
Groups develop vision for OAA legal assistance

The ABA expressed support in principle July 11 for “A Vision for Legal Assistance in Reauthorization of the Older Americans Act (OAA),” which was developed over the past several months by a diverse group of legal and aging services organizations.

“Legal assistance can be critical in helping older Americans attain or retain access to services and benefits that are essential to maintain dignity, comfort, security, and quality of life.” ABA Governmental Affairs Director Thomas M. Susman wrote to Sen. Bernard Sanders (I-Vt.), who chairs the Senate Health, Education, Labor and Pensions Subcommittee on Primary Health and Aging and has introduced S. 1028, OAA reauthorization legislation.

Susman said that the ABA views reauthorization of the act, which guides many programs and services such as legal assistance, as “an important opportunity for Congress to reaffirm and refine our country’s commitment to a safe, secure and dignified life for all older Americans.”

He explained that the ABA approved policy in 2010 supporting specific components of the Vision, including continuing the status of legal assistance as a priority service, encouraging the development of a coordinated delivery system, empowering legal assistance developers, continuing national support centers, and targeting services to seniors with the greatest economic and social needs.

The groups that developed the Vision include the National Academy of Elder Law Attorneys, the National Association of Senior Legal Hotlines, the National Association of Legal Service Developers, Bet Tzedek Legal Services, and the Legal Aid Justice Center (Virginia).

Sanders’ bill includes provisions to promote federal, state and local efforts to protect the elderly from abuse, neglect and exploitation, and would establish an advisory committee to assess, coordinate and improve legal assistance activities. The bill also would update the definitions of greatest economic and social need and include additional categories of older adults, including veterans, Holocaust survivors, those with Alzheimer’s disease, and lesbian, gay, bisexual and transgender individuals.

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Judicial Vacancies/Confirmations — 113th Congress* (as of 7/24/13)

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<tr>
<th>Court</th>
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<th>Confirmations</th>
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<td>US Supreme Court (9 judgeships)</td>
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<tr>
<td>US Courts of Appeals (179 judgeships)</td>
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<tr>
<td>US District Courts (678 judgeships)</td>
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<tr>
<td>Court of International Trade (9 judgeships)</td>
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<tr>
<td><strong>Totals</strong></td>
<td><strong>77</strong></td>
<td><strong>31</strong></td>
<td><strong>28</strong></td>
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*Includes territorial judgeships
and have more successful transitions back to society show improved behavior during their time in custody. Susman wrote. He explained that
some cases, such methods should not replace critical in
alternative visitation methods such as video visitations in
prisoners in DC jail facilities. The legislation addresses
claims. H.R. 2655, sponsored by Rep. Lamar Smith (R-Texas) and known as the Lawsuit Abuse Reduction Act, also would eliminate a provision adopted in 1993 allowing parties and their attorneys to avoid sanctions by withdrawing frivolous claims within 21 days after a motion for sanctions is served. The current system, which give judges the option to sanction parties, replaced a mandatory sanctions provision that had been in place from 1983 to 1993. The previous process, according to subcommittee Ranking Member Jerrold Nadler (D-N.Y.), made the system “more litigious and costly” because it resulted in a single civil case becoming two cases – one on the merits and another on complaints of whether or not the case was frivolous. In a
July 24 letter to the House Judiciary Committee, ABA Governmental Affairs Director Thomas M. Susman wrote that the ABA maintains that the proposed revisions to Rule 11 are unnecessary and counterproductive and disagrees with the assertion by supporters that there has been a significant increase in the filing of non-meritorious litigation in the 20 years since the rule was revised to permit the discretionary imposition of sanctions. The association also emphasizes that any changes in the Federal Rules of Civil Procedure should be considered through the Rules Enabling Act process established by Congress. Under the act, the Judicial Conference of the United States drafts proposed rules and amendments, makes them available for public comment, and submits them to the U.S. Supreme Court after Judicial Conference approval. The Supreme Court transmits the proposals to Congress, which retains the final authority to reject, modify or defer any rule or amendment before it takes effect.

HUMAN TRAFFICKING: Human trafficking continues to be a top issue in Congress as a House panel focused on the State Department’s annual “Trafficking in Persons Report” during a July 11 hearing. The report includes assessments of 188 countries and territories on their governments’ effectiveness in combatting human trafficking. This year, 30 countries, including the United States, are ranked on Tier 1, which means that the countries have acknowledged the existence of human trafficking, made efforts to address the problem, and complied with certain minimum standards. Twenty-one countries are on Tier 3 for doing very little to address the crisis. During the hearing – held by the House Foreign Affairs Subcommittee on Africa, Global Health, Global Human Rights, and International Organizations – Ambassador-at-Large Luis CdeBaca, of the State’s Department’s Office to Monitor and Combat Trafficking in Persons, explained that much more needs to be done across the globe. “There is no government in the world doing enough to fight it,” he said. He noted, however, that the report “has shined a light in the dark corners of the world.” ABA President Laurel G. Bellows has made human trafficking an ABA presidential priority this year. “This modern form of slavery is one of the most tragic and disgraceful criminal endeavors ever to exist,” she said in a recent interview. “The ABA is marshaling the energy and resources of our nation’s lawyers to change the way our legal system approaches human trafficking,” Bellows stated.

INMATE VIDEO VISITATION: The ABA expressed support June 19 for Bill 20-122, legislation introduced in February in the District of Columbia to expand visitation options for family and others visiting prisoners in DC jail facilities. The legislation addresses procedures instituted last year in DC that limit visitation with male and juvenile inmates to video visits. In a letter to DC Councilmember Tommy Wells, chairperson of the DC City Council’s Committee on the Judiciary and Public Safety, ABA Governmental Affairs Director Thomas M. Susman said the ABA urges correc
tional facilities to develop visitation policy that assists prisoners in maintaining and developing healthy family relationships. While the ABA supports developing alternative visitation methods such as video visitations in some cases, such methods should not replace critical in-person contact visits, Susman wrote. He explained that the ABA’s policy is based on several studies revealing that people who receive visits from and maintain relationships with friends and family while incarcerated show improved behavior during their time in custody and have more successful transitions back to society than those who do not. In addition, families and chil-

LAWSUIT ABUSE REDUCTION ACT: The House Judiciary Subcommittee on the Constitution and Civil Justice approved ABA-opposed legislation July 17 that would circumvent the Rules Enabling Act to amend Rule 11 of the Federal Rules of Civil Procedure to require, rather than permit, the imposition of monetary sanctions against lawyers for filing non-meritorious claims. H.R. 2655, sponsored by Rep. Lamar Smith (R-Texas) and known as the Lawsuit Abuse Reduction Act, also would eliminate a provision adopted in 1993 allowing parties and their attorneys to avoid sanctions by withdrawing frivolous claims within 21 days after a motion for sanctions is served. The current system, which give judges the option to sanction parties, replaced a mandatory sanctions provision that had been in place from 1983 to 1993. The previous process, according to subcommittee Ranking Member Jerrold Nadler (D-N.Y.), made the system “more litigious and costly” because it resulted in a single civil case becoming two cases – one on the merits and another on complaints of whether or not the case was frivolous. In a
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ABA urges WH comments on Senate CIA study

ABA President Laurel G. Bellows urged the White House last month to submit comments to the Senate Select Committee on Intelligence on the committee’s Study of the Central Intelligence Agency’s Detention and Interrogation Program. The study was approved by the committee in December and transmitted to relevant agencies for review with the request that the White House coordinate and submit comprehensive comments.

According to committee Chair Dianne Feinstein (D-Calif.), the study “uncovers startling details about the CIA detention and interrogation program and raises critical questions about intelligence operations and oversight.”

The committee stated in its report on the study that once it receives the administration’s feedback, committee members will consider the comments and discuss recommendations for reform and public release of the study.

In her June 27 letter to President Obama, Bellows urged the president to recommend public release of the study with portions that are essential to national security redacted.

“Public release of the study would provide long-overdue accountability at home and abroad,” Bellows said, adding that release also would demonstrate that the United States is committed to fulfilling its international obligations to investigate allegations of torture. Americans also for the first time would be able to evaluate claims about the lawfulness of, necessity for, and effectiveness of the CIA’s use of “enhanced interrogation,” she concluded.

Bellows explained that the ABA has long condemned the use of torture or other cruel, inhumane or degrading treatment or punishment of persons in custody or under the physical control of the U.S. government and strongly supported the president’s 2009 executive order closing CIA “black sites” where detainee interrogation abuses had been found.