President signs VAWA legislation after Congress clears bipartisan bill

President Obama signed an ABA-supported bipartisan bill March 7 to reauthorize the Violence Against Women Act (VAWA).

The legislation, S. 47, cleared the House Feb. 28 on a 286-138 vote after members rejected a narrower substitute amendment.

S. 47, which had passed the Senate Feb. 12 by a 78-22 vote, includes provisions for the first time to ensure that victims seeking assistance under VAWA cannot be denied services based on gender identity or sexual orientation. The new law also strengthens tribal criminal jurisdiction over non-Native Americans who assault Native American spouses and dating partners in Indian country and includes provisions to reduce the backlog of untested rape kits.

In addition, the measure reauthorizes the Legal Assistance for Victims (LAV) program, which makes competent pro bono legal assistance available to victims of domestic violence, dating violence, sexual assault or stalking.

Also unexpectedly included in the measure is reauthorization of the Trafficking Victims Protection Act (TVPA), a law strongly supported by the ABA that funds programs combating sex and labor trafficking in the United States and internationally. The provisions, added as an amendment during Senate consideration of S. 47, encourage the distribution of a national human trafficking hotline within federal and state agencies and establish grant programs for states to assist child victims of sex trafficking. The provisions also help foreign governments investigate possible human trafficking by labor recruitment centers and strengthen the ability of prosecutors to bring human trafficking cases.

Efforts to reauthorize VAWA, which had expired in 2011, stalled during the 112th Congress when the Senate and House passed different versions of the legislation. The ABA supported the Senate version, opposing the House bill because it did not include provisions to expand services to underserved populations, such as victims of faith communities and those who are denied services because of their sexual orientation or gender identity.

The legislation died at the end of last year for procedural and substantive reasons. Procedurally, the House argued that the Senate bill included a revenue provision that did not originate in the House as required by the Constitution. Substantively, the House objected to provisions related to immigration, tribal jurisdiction, and services for lesbian, gay, bisexual and transgender (LBNGT) individuals.

Final congressional approval of S. 47 is a victory for the ABA, which considers VAWA and TVPA reauthorization as priority issues. In recent letters to both House and Senate, ABA President Laurel G. Bellows noted the ABA’s longstanding support for efforts to address domestic, sexual and stalking vio-
## 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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</thead>
<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 practice of straw purchasing and illegal trafficking in firearms.</td>
<td>H.R. 437 was referred to the Judiciary Committee on 1/29/13; H.R. 452, on 2/4/13.</td>
<td>S. 54 was referred to the Judiciary Committee on 1/22/13; S. 150, on 1/22/13. Judiciary Committee held hearings on 1/30/13 and 2/27/13, and approved S. 54 on 3/7/13. Judiciary subcommittee held a hearing on 2/12/13.</td>
<td>Supports steps to prevent gun violence by strengthening the nation’s gun laws.</td>
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<tr>
<td><strong>Immigration.</strong> A bipartisan group of senators and the president each unveiled principles in February for overhauling the nation’s immigration system.</td>
<td>Judiciary subcommittee held a hearing on 2/5/13.</td>
<td>Judiciary Committee held a hearing on 2/13/13.</td>
<td>Supports comprehensive immigration reform that promotes legal immigration based on family reunification and employment skills and a path to legal status for much of the undocumented population currently residing in the United States. See page 8.</td>
<td></td>
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Midyear Meeting results in number of new policies

The ABA House of Delegates, convening Feb. 11 during the association’s Midyear Meeting in Dallas, approved numerous new policies that included resolutions calling for protection of human trafficking victims, supporting adequate funding for the federal courts and legal services, and supporting greater disclosure of campaign spending.

The delegates also adopted the final four recommendations of the Commission on Ethics 20/20, which proposed revisions to the *ABA Model Rules of Professional Conduct* that focus on advances in technology and the globalization of legal practice.

The following is a summary of new policies approved by the delegates.

**Access to Justice**

**Federal Courts and Legal Services Corporation.** Urges federal elected officials, as they consider deficit reduction for fiscal year 2013 and beyond, to maintain access to justice by ensuring adequate funding for the federal courts and the Legal Services Corporation.

**Legal Services.** Encourages practitioners, when appropriate, to consider limiting the scope of their representation, including the unbundling of legal services as a means of increasing access to legal services. This allows lawyers to provide only agreed-upon tasks, with the clients performing the remaining tasks on their own.

**Administrative Law**

**Government Contracts.** Supports the action by the Federal Acquisition Regulatory Council in promulgating, in response to the fiscal year 2009 National Defense Authorization Act, the 2011 rule on preventing personal conflicts of interest for contractor employees performing acquisition functions. This includes model contract language focusing on the activity likely to give rise to such conflicts as well as the significant risks the conflicts present.

**Courts**

**Bankruptcy Judges.** Supports the position that U.S. bankruptcy judges have the authority, upon the consent of all the parties, to hear, determine and enter final orders and judgments in proceedings that, while they may be among those designated as “core” within the meaning of 28 U.S.C. §157(b), may not otherwise be heard and determined by a non-Article III tribunal absent the parties’ consent.

**Criminal Justice**

**Indigent Defense Services.** Urges Congress to establish, with sufficient funding, an independent federally funded Center for Indigent Defense Services to assist state, local, tribal and territorial governments in carrying out their constitutional obligation to provide effective assistance of counsel for the defense of the indigent accused in criminal, juvenile and civil commitment proceedings.

**Excessive Caseloads.** Urges governments to enact legislation to prohibit the retaliatory discharge of a chief public defender or other head of an indigent defense services provider because of his or her good faith effort to control acceptance of more clients than the office can competently and diligently represent in accordance with ethical obligations.

**Prosecutor Training.** Urges the federal government to restore, maintain and, where appropriate, increase funding to organizations that provide training to state and local prosecutors to better promote justice, increase public safety, and prevent wrongful convictions.

**Juvenile Immigration Status.** Urges federal, state, territorial, tribal and local courts to ensure that defense counsel for a juvenile in a criminal or juvenile adjudication of

During the Midyear Meeting, cybersecurity experts discussed issues surrounding defense in cyberspace. Those participating on the panel were (from left): Emily Frye, principal engineer, The MITRE Corporation; Stewart Baker, partner, Steptoe & Johnson, and former general counsel, National Security Agency; Steven Chabinsky, senior vice president of legal affairs and chief risk officer, CrowdStrike; and moderator Harvey Rishikoff, professor of law, Drexel University, and chair, ABA Advisory Committee on Law and National Security. The program was sponsored by the ABA Standing Committee on Law and National Security. The program was sponsored by the ABA Cybersecurity Legal Task Force and the ABA Government and Public Sector Lawyers Division.

see “Midyear Meeting, page 4”
Midyear Meeting

William C. Hubbard is president-elect nominee

William C. Hubbard, nominated during the Midyear Meeting to be the ABA’s president-elect nominee, told the ABA House of Delegates Feb. 11 that the association should “create a new standard for diversity and inclusion that is the envy of the world.”

Hubbard, a former chair of the ABA House of Delegates, is a partner in the law firm of Nelson, Mullins, Riley & Scarborough in Columbia, South Carolina. As president-elect nominee, he is in line to become ABA president in August 2014.

In addition to chairing the House of Delegates, Hubbard has served as president of the American Bar Foundation and is a past president and current board member of the American Bar Endowment. He has served on the ABA Board of Governors and the ABA Standing Committee on the Federal Judiciary and was chair of the ABA Young Lawyers Division.

Hubbard currently chairs the Board of Directors of the World Justice Project, an international project designed to measure and strengthen the rule of law worldwide.

He is a permanent member of the U.S. Fourth Circuit Judicial Conference and is on the Board of Trustees of the University of South Carolina.

Hubbard received his law degree from the University of South Carolina School of Law in 1977.

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delinquency proceeding inquire and investigate a juvenile defendant’s immigration status and inform the defendant about possible collateral consequences. Also supports training about immigration consequences of convictions and any available relief from such consequences.

Grand Jury. Urges the Judicial Conference of the United States to amend the Model Grand Jury Charge to clarify that the grand jury should be instructed to consider charges and vote separately on each individual if charges are made against more than one person.

Election Law

Campaign Spending. Supports efforts to increase disclosure of political and campaign spending, and urges Congress to require organizations that are not required to do so by current law as applied by the Federal Election Commission to disclose the source of funds used for making electioneering communications and expenditures and the amount spent.

Ethics

Multijurisdictional Practice. Amends Rule 5.5(d) of the ABA Model Rules of Professional Conduct to permit foreign lawyers to serve as in-house counsel in the United States but with added requirements.

Court Appearances. Amends the ABA Model Rule on Pro Hac Vice Admission to provide judges with guidance about whether to grant limited and temporary practice authority to foreign lawyers to appear in U.S. courts.

Conflicts of Interest. Amends Model Rule 8.5 of the ABA Model Rules of Professional Conduct to address conflicts-related choice of law issues, particularly those that are difficult to resolve when a lawyer’s representation of a client involves a matter that relates to several U.S. or foreign jurisdictions simultaneously.

Human Trafficking

Victim Prosecution. Urges governments to enact laws and regulations and to develop policies to assure that once an individual has been identified as an adult or minor victim of human trafficking, that individual should not be subject to arrest, prosecution or punishment for crimes related to their prostitution or other nonviolent crimes that are a direct result of their status as a victim of human trafficking.

Victim Defense. Urges governments to enact legislation allowing adult or minor human trafficking victims charged with prostitution-related offenses or other nonviolent offenses that are a direct result of their being trafficked to assert an affirmative defense of being a human trafficking victim.

Criminal Convictions. Urges governments to aid human trafficking victims by enacting and enforcing laws and policies that permit

see “Midyear Meeting,” page 5
continued from page 4

adult or minor victims of human trafficking to seek to vacate their criminal convictions for offenses related to their prostitution or other non-violent offenses that are a direct result of their trafficking victimization.

Training Programs. Urges bar associations, working with professionals with subject-matter expertise in human trafficking, to develop and implement training programs for judges, prosecutors, defense counsel, law enforcement officers and other investigators to enable them to identify adult and minor victims of human trafficking and to direct them to agencies that offer social and legal services and benefits designed to assist such victims.

Intellectual Property
Patent Protection. Supports the principle that laws of nature, physical phenomena, and abstract ideas are not eligible for patenting as a process under 35 U.S.C. §101, even if they had been previously unknown or unrecognized.

Direct Infringement. Supports clarification of the standards for finding direct patent infringement under 35 U.S.C. §271(a) in cases requiring a multiple-step process where separate entities collectively, but not individually, perform the required steps of the patented process.

Legal Profession
Specialization. Recreacred for five years the following specialty certification programs for lawyers: the Elder Law Program of the National Elder Law Foundation of Tucson, Arizona; and the Legal Malpractice Program and the Medical Malpractice Program of the American Board of Professional Liability Attorneys of Atlanta, Georgia.

Paralegals. Grants approval and reapproval to several paralegal education programs, withdraws the approval of three programs at the request of the institutions, and extends the term of approval to several paralegal education programs.

Litigation
Jury Trials. Amends certain principles of the 2005 Principles for Juries and Jury Trials concerning judges’ and lawyers’ duty to preserve the jury trial, expanding the concept of jurors talking about the case to any form of communication, including non-English speakers in the jury pool, and protecting juror privacy with regard to juror questionnaires.

Public Contract Law
Federal Claims. Urges Congress to repeal and replace 28 U.S.C. §1500, as recommended by the Administrative Conference of the United States, to eliminate unnecessary procedural obstacles to the fair and efficient review of claims against the United States in the U.S. Court of Federal Claims.

Tort Law
Medicare Secondary Payer. Supports timely and efficient resolution of requests from a claimant or applicable plan for conditional payment reimbursement where Medicare has a right to reimbursement from a recovery resulting from a settlement, judgment or award for payments. Urges Congress and the Department of Health and Human Services to establish reasonable time limits and procedures for responding to such requests.

Uniform State Laws
The House of Delegates approved the following uniform state laws: Uniform Asset Freezing Orders Act; Uniform Deployed Parents Custody and Visitation Act; and Uniform Premarital and Marital Agreements Act.

Other Highlights
During the week-long meeting, the association announced the election of William C. Hubbard, of South Carolina, to be the ABA’s president-elect nominee in line to assume the presidency in August 2014 (see article, page 4).

Former Sen. Kay Bailey Hutchison (R-Texas) welcomed the House of Delegates to Dallas. She was greeted by ABA Governmental Affairs Director Thomas M. Susman.

In addition, the Board of Governors approved the association’s Legislative and Governmental Priorities for the first session of the 113th Congress. The selection of priorities is based on a survey of bar leaders and ABA members and a joint recommendation from the Standing Committee on Governmental Affairs and the Governmental Affairs Office. This year’s categories are:

• Access to Legal Services;
• Campaign Finance and Election Law Reform;
• Criminal Justice System Improvements and Gun Violence Prevention;
• Elimination of Discrimination;
• Immigration Reform;
• Independence of the Judiciary;
• Independence of the Legal Profession;
• International Rule of Law; and
• National Security and Civil Liberties.
Congress again weighs cybersecurity proposals

Cybersecurity issues are once again in the forefront on Capitol Hill following the president’s Feb. 12 presidential policy directive and executive order and reintroduction the next day of cybersecurity legislation in the House.

ABA President Laurel G. Bellows called the president’s executive order “a productive first step to address the serious threats posed by foreign nations, criminal syndicates and hackers to our national, corporate and individual security.”

The order, she said, is in line with many of the cybersecurity principles adopted by the ABA last fall. These include engaging stakeholders for public-private cooperation, enhancing the hiring of private-sector subject matter experts, and encouraging the involving of industry-led standards organizations. The order also mandates that protections for private and civil liberties be incorporated into cybersecurity activities based on applicable policies, principles and frameworks. Also established will be a mechanism for intelligence agencies to share more threat information with owners and operators of critical infrastructure, and the expediting of processes for security clearances.

Other commendable provisions, Bellows said, call for development of a cybersecurity framework to reduce cyber risks to critical infrastructure and for guidance that is technology neutral to allow for a competitive market for products and services.

Bellows emphasized that the president’s action begins the process and that “Congress has the opportunity and the legislative responsibility to comprehensively address the gaps and issues that are beyond the authority of an executive order.”

The first major bill reintroduced Feb. 13 is H.R. 624, sponsored by Rep. Mike Rogers (R-Mich.) and C.A. Dutch Ruppersberger (D-Md.), the chairman and ranking member, respectively, of the House Permanent Select Committee on Intelligence.

At a Feb. 14 hearing before the committee, Rogers said his bill, the Cyber Intelligence Sharing and Protection Act, would authorize the government to provide classified cyber threat information to the private sector and knock down barriers for sharing among private sector companies and between private sector companies and the government.

Witnesses at the hearing supported public-private sharing of threat information.

John Engler, president of the Business Roundtable, testified that cybersecurity threats, which he said are “dynamic and ever-evolving” are presenting risks that neither the public nor the private sector can unilaterally protect against. “The public and private sectors should develop and integrate roles and responsibilities that enable us to systematically work together toward the

see “Cybersecurity,” page 7

Judicial Vacancies/Confirmations — 113th Congress*  
(as of 3/8/13)

<table>
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<th>Court</th>
<th>Vacancies</th>
<th>Pending Nominations</th>
<th>Confirmations</th>
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<tr>
<td>US Supreme Court (9 judgeships)</td>
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<tr>
<td>US Courts of Appeals (179 judgeships)</td>
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<td>US District Courts (678 judgeships)</td>
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<td>3</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>87</strong></td>
<td><strong>33</strong></td>
<td><strong>4</strong></td>
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*Includes territorial judgeships
ABA President Laurel G. Bellows joined with American Association for Justice President Alice McLarty and Mary Massaron Ross, president of DRI – The Voice of the Defense Bar, in a statement warning about the impact that mandatory funding cuts for 2013, known as sequestration, will have on access to justice.

President Obama signed the sequestration order March 1 after Congress was unable to enact a multi-year plan to reduce the federal deficit by $1.2 trillion as required by the Budget Control Act of 2011. Some programs are exempt from the $85 billion in across-the-board cuts, but approximately 1,200 budget accounts are affected, resulting in a 9.4 percent cut in non-exempt defense discretionary funding and an 8.2 percent decrease in non-exempt non-defense programs, including the federal courts.

“Severe and indiscriminate federal court budget reductions through sequestration combined with chronically anemic state funding for courts threaten access to justice for every American and put court petitioners, staff and judge in physical jeopardy,” according to the statement. The bar leaders emphasized that “the federal judiciary and every individual and business that depends on our courts will bear the burden for congressional deadlock through costly delays.”

The leaders also noted that sequestration will leave federal court security positions unfunded at a time when the nation has seen a spate of gun violence on courthouse grounds in Alabama, Delaware, Oklahoma, South Carolina and Texas.

In addition, they said, state courts have endured years of withering cuts despite overwhelming case-loads, and projected shortfalls from sequestration will likely mean even fewer resources for state judicial systems.

“Access to justice is a promise that would be too costly for our country to deny,” they concluded. ■

Cybersecurity

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common goal of protecting our information assets,” he said, recommending “robust, two-way information sharing with appropriate legal and private protections….”

Also supporting the legislation was Kenneth W. DeFontes Jr., testifying on behalf of Exelon Corporation, the Edison Electric Institute and the Electric Power Supply Association; and Paul Smocer, of the Financial Services Roundtable.

Additional hearings on cybersecurity issues have been scheduled before the House Oversight and Government Reform Committee, House Science and Technology Committee panels, and the Senate Homeland Security Committee.

Meanwhile, the president also released a strategy for preventing the theft of U.S. trade secrets in light of emerging trends indicating that the pace of economic espionage and trade secret theft against U.S. corporations is accelerating.

VAWA reauthorization

continued from front page

lence and emphasized that the legal profession fulfills an important role in addressing these crimes. The ABA Commission on Domestic & Sexual Violence, she said, has increased access to justice for victims by mobilizing the legal profession.

Bellows circulated a letter late on Feb. 27 urging House members to reject the substitute amendment and pass S. 47. She emphasized that the Senate-passed bill was crafted to reflect discussions with more than 2,000 advocates and experts from across the country.

Calling the expansion of VAWA protections a “critical victory for fairness and human dignity,” Bellows said, “Now we’ll be looking to Congress and President Obama to agree on a fiscal agenda that empowers law enforcement, aid groups, lawyers and courts to provide services to victims of violence and hold their attackers responsible. Allowing budget cuts to decimate the very programs Congress authorized through VAWA would send a terrible message that austerity is more important than public safety. We must leave intact the resources necessary to assist victims to recover fully from their traumatic experience.”

During House debate, Senate Democratic Leader Nancy Pelosi (D-Calif.) quoted from the ABA’s letter in urging the House to reject the substitute amendment and pass S. 47.

President Obama emphasized that VAWA “has saved countless lives and transformed the way we treat victims of abuse.” He added that the vote passing the legislation “will go even further by continuing to reduce domestic violence, improving how we treat victims of rape, and extending protections to Native American women and the LGBT community.” ■
ABA president urges immigration reform

*Emphasizes importance of access to counsel*

Citing an immigration system “plagued with problems at every level,” ABA President Laurel G. Bellows urged enactment last month of comprehensive immigration reform legislation.

What is needed, Bellows said in a Feb. 13 statement to the Senate Judiciary Committee, is reform that “fairly and realistically addresses the U.S. undocumented population, the need for immigrant labor, the value of family reunification, and the importance of an effective and humane immigration enforcement strategy.”

Bellows submitted the statement for the record of a hearing called by Senate Judiciary Committee Chairman Patrick J. Leahy (D-Vt.), who said that now is the time for immigration reform. The hearing followed the unveiling in January of a framework by a bipartisan group of senators and support for reform from President Obama.

Bellows emphasized the importance of meaningful access to legal representation for persons in immigration proceedings. Statistics show, she said, that asylum seekers and others who have legal representation are significantly more likely to succeed in their immigration cases. Legal assistance, she noted, is critical for a variety of reasons, including immigrants’ lack of understanding of complex immigration laws and procedures because of cultural, linguistic or educational barriers.

Bellows recommended expansion to all immigration detainees of the Legal Orientation Program (LOP), under which the Department of Justice Executive Office for Immigration Review contracts with nonprofit organizations to educate detainees on the law and explain the removal process.

The association also supports legal representation, including appointed counsel when necessary, for unaccompanied children and mentally ill and disabled persons.

Government-appointed counsel also should be provided for indigent non-citizens with potential relief from removal who are unable to secure pro bono counsel, she said.

Comprehensive immigration reform must address the detention of more than 400,000 foreign nationals annually in facilities throughout the country, Bellows said, explaining that noncitizens in removal proceedings should not be detained except in extraordinary circumstances where they are a flight risk or a risk to national security.

The association supports the enhancement of alternatives to detention and recommends that the detention system transition to a model of civil detention under humane conditions.

Bellows also urged Congress to address the ever-burgeoning caseload in the immigration courts. As of December 2012, there was a backlog of 322,818 cases and an average wait of nearly a year and half for a hearing. She suggested hiring enough additional immigration judges to bring the caseload total down to a number on par with other judges in the federal administrative adjudication system.

During the Feb. 13 hearing, Sen. Mazie Hirono (D-Hawaii) called on her colleagues to maintain the tradition of bringing families together rather than focusing primarily on employment issues as they consider immigration reform.

Department of Homeland Security (DHS) Secretary Janet Napolitano agreed, highlighting a recent DHS rule to reducing the amount of time U.S. citizens are separated from their families when applying for visas. She also emphasized the administration’s support for treating families of same-sex partnerships the same as other families under immigration law.

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The monthly *Washington Letter* reports news of national public interest to the legal profession, including congressional, executive branch and ABA activities concerning the association’s legislative priorities. The newsletter is published by the Governmental Affairs Office as a service to ABA members and national, state and local bar associations. Full text is available on the Internet at [http://www.americanbar.org/advocacy/governmental_legislative_work/publications.html](http://www.americanbar.org/advocacy/governmental_legislative_work/publications.html). © 2013 American Bar Association. All rights reserved. Please address correspondence to:


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