Senate prepares to consider gun violence prevention legislation

The Senate is expected to begin consideration of gun violence legislation the week of April 8 after members return from their spring recess, but the package will not include a proposed ban on assault weapons.

The legislation, introduced March 21 by Senate Majority Harry Reid (D-Nev.) as S. 649, the Safe Communities, Safe Schools Act of 2013, includes provisions from the following bills that were approved by the Senate Judiciary Committee in March along with a bill to ban assault weapons.

- **S. 374, the Fix Gun Checks Act of 2013.** This bill would strengthen background check requirements and the national instant check system by requiring background checks for gun show purchases and all private sales, with narrow exceptions for family transactions, hunting exchanges and life-threatening exigencies. In addition, the bill would provide support to states to improve reporting of mental health records to the National Instant Check System (NICS).

- **S. 54, the Stop Illegal Trafficking in Firearms Act of 2013.** The legislation addresses “straw purchases” of firearms that occur when a person who is not legally qualified to acquire a firearm or may wish to do so anonymously has someone else purchase the firearm on his or her behalf. Such straw purchases, which account for nearly a third of all firearms involved in federal trafficking investigations, are regularly used by criminals, criminal gangs, and persons disqualified by age.

- **S. 146, School Safety Enhancements Act of 2013.** This bill would amend the Omnibus Crime Control and Safe Streets Act of 1968 to authorize school security grants by the Office of Community Oriented Policing Services to be used for the installation of surveillance equipment and the establishment of hotlines or tiplines for the reporting of potentially dangerous students and situations.

Announcing that his gun violence legislation would include only three bills that have been approved by the Judiciary Committee, Reid emphasized that he will ensure that, after debate on the bill has begun, “a ban on assault weapons, limits to high-capacity magazines and mental health provisions will receive votes along with other amendments.” He also stressed that, in order be effective, any bill that passes the Senate must include background checks.

Sen. Dianne Feinstein (D-Calif.) expressed disappointment that S. 150, her bill to ban assault weapons, would not be part of Reid’s bill as introduced, but she said the fight is far from over. Feinstein’s bill would prohibit the sale, transfer, importation and manufacture of 157 dangerous military-style assault weapons and ban high-capacity ammunition magazines.

*see “Gun violence,” page 3*
## 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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<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. 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 on 1/30/13 and 2/27/13, and approved S. 54 on 3/7/13; S. 53, on 3/11/13; and S. 374, on 3/12/13. Judiciary subcommittee held a hearing on 2/12/13. S. 649 was placed on the Senate calendar on 3/21/13.</td>
<td><strong>Supports steps to prevent gun violence by strengthening the nation’s gun laws. See front page.</strong></td>
<td></td>
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<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 hearings on 2/5/13, 3/14/13 and 3/15/13.</td>
<td>Judiciary Committee held hearings on 2/13/13, 3/18/13 and 3/20/13.</td>
<td><strong>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.</strong></td>
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<td><strong>Violence Against Women Act.</strong> P.L. 113-4 (S. 47) consolidates and reauthorizes VAWA programs and includes, among other things, new provisions to strengthen tribal criminal jurisdiction and ensure that victims cannot be denied services based on gender identity or sexual orientation.</td>
<td>House passed S. 47 on 2/28/13.</td>
<td>Senate passed S. 47 on 2/12/13.</td>
<td>President signed P.L. 113-4 (S. 47) on 3/7/13.</td>
<td><strong>Supports VAWA reauthorization.</strong></td>
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U.S. legal profession faces challenges in India

The U.S. legal profession faces significant challenges in providing legal services in India, and addressing those challenges is one of the steps necessary for expanding the long-term trade and investment relationship between the two countries, the ABA told Congress last month.

“The ABA has long supported a liberalized, rules-based system of international trade, both as a mechanism to advance the rule of law and as a means to enhance the ability of U.S. lawyers and law firms to effectively serve their clients through cross-border practice,” ABA Governmental Affairs Director Thomas M. Susman wrote in a letter to the House Ways and Means Subcommittee on Trade, which held a hearing on U.S.-India trade relations March 13.

Susman noted that the ongoing globalization of commercial activity by American individuals and businesses makes it imperative for U.S. lawyers to be able to provide advice and assistance to their clients wherever the clients need that assistance. The United States, he said, is the largest exporter of services in the world, and the U.S. legal profession exports more than $7 billion in legal services a year. As a rapidly emerging economy and a leading destination for U.S. business and investment, India is a critical market for U.S. lawyers and law firms, he said, but unfortunately India continues to be one of the most restrictive markets.

A 2009 ruling issued by the Bombay High Court prohibits U.S. and other foreign law firms from establishing offices in India, but a 2012 Madras High Court found no bar to foreign lawyers or law firms from providing services on a fly-in fly-out basis to give advice on home country or international law or to participate in arbitration proceedings involving international commercial transactions. The Bar Council of India appealed the Madras ruling, however, and the case is pending before the Supreme Court of India.

The ABA, which will be filing an amicus curiae brief in the case, predicts serious consequences for

Gun violence legislation nears Senate vote

continued from front page

The ABA voiced its support for legislation to address gun violence, including an assault weapons ban, in a March 6 letter from President Laurel G. Bellows to Senate Judiciary Committee Chairman Patrick J. Leahy (D-Vt.) and Ranking Member Charles E. Grassley (R-Iowa).

The key bills approved by the Senate committee are each constitutionally valid, as they are all presumptively lawful regulations as described by the Supreme Court,” Bellows wrote. “Neither requirements for background checks nor authorization for prosecution of straw purchasers have any cognizable impact on lawful gun owners,” she said, and both proposals “are constitutional and necessary as sound policy steps to reduce the threat of gun violence in our communities.”

Bellows emphasized that recent public polling suggests that for the first time there is broad recognition by the American public, including gun owners, that gaps in the background check system for gun sales still allow easy, unchecked access to guns by criminals and the mentally ill.

Bellows acknowledged that “no single action by Congress will prevent all mass shootings or result in a background check system that is 100 percent enforceable,” but added that “we must act now to improve the weak and flawed laws at issue.”

She also reiterated the ABA’s opposition to any amendments that may be offered to add mandatory minimum sentences to the gun bills. Mandatory minimum sentences are “unnecessary and could result in unintended and unforeseeable injustices – as is the case with all mandatory minimum sentences – and higher cost to taxpayers,” she said.

Meeting with families of gun violence victims at the White House March 28, President Obama urged the Senate to move quickly on the gun violence legislation, stressing that all of the proposals in S. 649, as well as a ban on assault weapons, are consistent with the Second Amendment and would not infringe on the rights of responsible gun owners.

“What they will do is keep guns out of the hands of dangerous people who put others at risk. This is our best chance in more than a decade to take common-sense steps that will save lives,” he said.
Senate bill would allow federal judges sentencing discretion

Sens. Rand Paul (R-Ky.) and Patrick Leahy (D-Vt.) introduced legislation March 20 addressing the problem of the increasing federal prison population and spiraling prison costs.

S. 619, known as the Justice Safety Valve Act of 2013, would “combat injustice in federal sentencing and the waste of taxpayer dollars by allowing judges appropriate discretion in sentencing,” Leahy said in a statement accompanying introduction of the bill.

The measure would extend the current safety valve, which allows certain low-level drug offenders to avoid mandatory minimum penalties, to all federal crimes subject to mandatory minimum penalties. The provisions would allow a judge to impose a sentence other than a statutorily designated mandatory sentence in cases in which key factors are present.

Those factors may include the fact that a defendant does not have a serious criminal history, the individual did not use violence, the offense did not result in death or serious bodily injury to any person, the defendant was not a leader or organizer of the crime, and the defendant told the truth to authorities.

A judge would be required to provide notice to the parties and explain in writing the reasons for the alternative sentence.

“The United States has a mass incarceration problem,” Leahy said, pointing out that as of early March the federal prison population was more than 217,000 – a 55 percent increase since 2000. Almost half of these inmates are imprisoned for drug crimes.

In addition, over the past five years, the prison budget has grown by nearly $2 billion from $5.1 billion to $6.8 billion.

“As more and more people are incarcerated for longer and longer, the resulting costs have placed an enormous strain on the Justice Department’s budget and have at the same time severely limited the ability to enact policies that prevent crimes effectively and efficiently,” Leahy said.

The number of mandatory minimum penalties in the federal criminal code nearly doubled from 1991 to 2011, and such penalties can lead to terrible unjust results, Leahy said. Because of this, he said, judges overwhelmingly oppose mandatory minimum sentences and agree that the existing safety valve should be extended to all federal crimes.

“Congress has too often moved in the wrong direction by imposing new mandatory minimum sentences unsupported by evidence while failing to reauthorize crucial programs like the Second Chance Act to rehabilitate prisoners who will be released to rejoin our communities,” he explained.

The ABA, which has longstanding policy opposing mandatory minimum sentences, supports S. 619 and reauthorization of the Second Chance Act.

For hearings last year before the Senate Judiciary Committee, Wm. T. (Bill) Robinson III, who was then ABA president, submitted a statement for the record stating that a disproportionate investment in prison expansion has diminished attention to viable and fiscally sound alternatives to prison and undermined the concept that prison should be the sanction of last resort. Successful bipartisan reforms at the state level, including removing mandatory minimums for first-time offenders, have led to the first overall decline in state prison populations since 1980, he said in his statement.

India restricts U.S. legal services

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the U.S. legal profession and U.S. commercial transactions in India if the Supreme Court issues a decision prohibiting fly-in fly-out access.

“Requiring officials of Indian companies to travel outside India to obtain advice concerning non-Indian law would significantly raise the transaction costs of Indian companies, creating an additional impediment to retaining the services of U.S.-based law firms,” Susman said. In addition, prohibiting American lawyers from traveling with their U.S. clients to India to advise on U.S.-related legal issues in connection with transactions, venues, financings, and international arbitrations with India-based companies, Susman said, will severely handicap the ability of U.S.-based companies to pursue activity with Indian counterparties.

Thirty-two U.S. jurisdictions have adopted the ABA Model Rule for Licensing and Practice by Foreign Legal Consultants, which allows foreign licensed lawyers, upon certain conditions, to establish an office in the relevant state and advise clients, face-to-face or otherwise, on the laws of the jurisdictions in which they are licensed without passing any examinations or undergoing any additional training.

The ABA maintains that U.S. lawyers and law firms should be provided access in India comparable to that accorded lawyers from India by most jurisdictions in the United States.
ABA President Laurel G. Bellows urged a House Appropriations subcommittee March 21 to provide $440 million in fiscal year 2014 for the Legal Services Corporation (LSC), emphasizing that the increasing number of people eligible for legal aid makes adequate funding for LSC more important than ever.

LSC’s current funding is $358 million, set by the final fiscal year 2013 continuing resolution signed March 26 by the president. That figure, however, is expected to be further decreased in 2014 by approximately $18 million as a result of budget caps established under the Budget Control Act of 2011.

Bellows – in her statement to the Subcommittee on Commerce, Justice, Science and Related Agencies – explained that LSC was funded at $420 million in 2010, and the recommended $440 million for fiscal year 2014 is a conservative estimate of the 2010 appropriations figure indexed for inflation.

“The ABA understands that federal funding must be carefully apportioned among many worthwhile programs and that the government has serious budgetary limitations,” Bellows said. “At the same time, the responsibility for providing justice for Americans is an obligation of government, referenced in the Preamble of the U.S. Constitution. The need for increased funding for LSC is paramount: for justice to prevail, access to justice must be universal,” she stressed.

Bellows explained that LSC, the largest provider of civil legal assistance to the poor in the nation, offers civil legal assistance to Americans at or below 125 percent of the federal poverty guidelines by providing grants to 134 local programs operating in all 50 states, the District of Columbia and Puerto Rico. Individuals receiving assistance include veterans returning from war, domestic violence victims, individuals undergoing foreclosure or other housing issues, those coping with the aftereffects of natural disasters, and families involved in child custody disputes.

Limited resources prevent LSC grantees from responding to more than half the applications for legal assistance by eligible individuals. The actual level of need is even larger than the current demand reflects because many poor people with life-altering legal problems “simply do not seek assistance because they are aware that they have at best a 50-50 chance of getting help,” Bellows said.

“Civil legal aid for the poor is a prime example of constituent services provided in every congressional district in the United States,” Bellows told the subcommittee. She emphasized that the services received through LSC-funded programs help prevent individuals from requiring assistance from public social service programs that could lead to a long-term reliance on such programs.

Bellows emphasized that federal funding to LSC provides a foundation for the country’s legal aid delivery system and is supplemented by other funding sources, including state government funding and use of court fees and fines to support legal aid. She explained, however, that federal funding is increasingly critical because the recent recession has diminished the other funding sources, and pro bono efforts, while critical, are insufficient to completely replace federal legal aid funding.
Judicial Vacancies/Confirmations — 113th Congress*  
(as of 4/5/13)

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<th>Court</th>
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<th>Confirmations</th>
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<td>US Courts of Appeals</td>
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<tr>
<td>Totals</td>
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*Includes territorial judgeships
INMATE CALLING SERVICES: ABA President Laurel G. Bellows submitted comments March 25 urging the Federal Communications Commission (FCC) to ensure that telephone service contracts are subject to competition and are used only to serve the prison population. Non-competitive contracts that set rates artificially high in order to provide income to prisons are in violation of the ABA Standards for the Treatment of Prisoners and the Telecommunication Act of 1996, she said. The ABA standards recognize the important link between prisoners’ communication with family and community and their successful re-entry into society. The standards state that prisoners and their families should not be charged arbitrary fees during incarceration, including exorbitant fees for phone use. “These practices are tearing families apart, and significantly conflict with and undermine more fundamental correctional policies aimed at promoting successful reentry and at reducing recidivism,” Bellows wrote. The association also is committed to protecting the interests of immigrant detainees, who continue to struggle with inadequate access to telephones, legal representation and legal materials. The ABA recommends that the FCC cap rates within the inmate calling services (ICS) market, open up the ICS market to outside competition, and bar states from receiving site commissions. For immigration detention, the ABA recommends, among other things, that service providers be required to offer the broadest range of calling options, that certain free calls be available to assist detainees who are representing themselves, and that calls to a legal representative are provided to detainees at no cost.

JUDICIAL DIVERSITY: The ABA expressed support last month for provisions in a bill introduced in the California Assembly that would incorporate disability status into the list of demographic data that is collected from all applicants seeking judicial office. The bill, AB 1005, also would incorporate veteran status in the list of demographic data collected along with information relative to ethnicity, race, gender, gender identity, and sexual orientation provided by applicants. “Judicial diversity helps ensure that officials representing the judiciary reflect those whom the system serves, thus helping to promote public confidence in the decisions rendered,” ABA Governmental Affairs Director Thomas M. Susman wrote in a March 27 letter to the California State Assembly Committee on Judiciary. He said that in 1991 the ABA adopted a policy calling for “studies of the existence, if any, of bias in the federal judicial system, including bias based on race, ethnicity, gender, sexual orientation and disability.” He also noted that while the ABA strongly opposes all forms of employment discrimination, including specifically discrimination against veterans, the association does not have a policy with regard to veterans’ preference in the appointment of federal judges. The ABA, therefore, is not in a position either to support or oppose the inclusion of data collection for veterans in the California legislation, he said.

SEXUAL ABUSE ON DETENTION FACILITIES: The ABA believes that standards proposed recently by the Department of Homeland Security (DHS) to address sexual abuse and assault in immigration detention facilities are promising but need to be further clarified and strengthened in some areas. In comments submitted Feb. 26 to DHS Secretary Janet Napolitano, ABA Governmental Affairs Director Thomas M. Susman noted that persons held in immigration detention facilities filed more than 170 allegations of sexual abuse from 2007 to 2011. The ABA has called for Immigration and Customs Enforcement (ICE) to transition to a comprehensive civil detention system, and Susman said that Civil Immigration Detention Standards, adopted in August 2012 by the ABA House of Delegates, specifically incorporate the Prison Rape Elimination Act (PREA) as a key protection for detainees. Standards required under PREA were adopted last year by the Department of Justice (DOJ) and intended to apply to all federal confinement facilities, including those operated by departments and agencies other than DOJ. Addressing the standards proposed by DHS, Susman made the following recommendations: DHS should incorporate the new PREA standards into facility contracts within one year of finalizing its proposed standards; standards for DHS holding facilities and transportation of detainees should provide the same level of protection as that provided for detention facilities; DHS should strengthen the auditing mechanisms in its proposal; and regulatory provisions should meet the standards set forth by DOJ. Susman also expressed particular concern that there is a lack of specialized regulations for children in immigration custody.

Celebrate Law Day
May 1, 2013
Realizing the Dream: Equality for All
ABA supports advance care planning legislation

The ABA expressed support April 1 for H.R. 1173, legislation to provide meaningful access to patient-centered advance care planning.

ABA Governmental Affairs Director Thomas M. Susman commended Rep. Earl Blumenauer (D-Ore.) for once again introducing the legislation, which is known as the Personalize Your Care Act of 2013.

The ABA has promoted, for almost three decades, the value of advance planning and the use of advance health care directives by all adults, Susman said, and has adopted specific policies supporting protocols such as Physicians Orders for Life-Sustaining Treatment (POLST) and the strengthening of the Patient Self Determination Act. He explained that in the last few years an expanding body of medical literature has demonstrated the importance of recurring physician-patient-family communications as essential to making patients’ values and goals of care known and honored.

“Advance care planning is effective when it succeeds in identifying and respecting the individual’s treatment goals and personal values, particularly as individuals begin to confront serious progressive, life-limiting conditions,” he wrote.

H.R. 1173 would provide Medicare and Medicaid coverage for voluntary consultations about advance care planning every five years or in the event of a change in health status. The legislation also would ensure that an individual’s electronic health record is able to display his or her current advance directive and/or POLST.

In addition, the bill would ensure that advance directives are portable so that those completed in one state are recognized in another state if care is to be provided. Other provisions provide grants to states to establish or expand POLST programs.

“Successful advance care planning is less about legal documentation and more about facilitating ongoing communication about future care wishes among individuals, their health care providers and surrogates,” Blumenauer said in a statement accompanying introduction of the bill.

Susman emphasized that the legislation recognizes that opportunities for consultation are an integral part of patient-centered quality care and that the quality of care for patients with advanced progressive illness is greatly enhanced when a systemic process exists that converts the wishes of these patients into an effective set of medical orders.

Judicial budget cuts

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“The minimum amount required to meet our constitutional and statutory responsibilities.”

Supreme Court Justices Anthony Kennedy and Stephen Breyer also weighed in on the judiciary budget at a March 14 hearing before the same subcommittee.

They emphasized that the judiciary’s budget request amounts to just two-tenths of one cent of every tax dollar spent but that the judiciary’s function, the administration of justice, produces expenses that are beyond the judiciary’s own power to regulate.

The fiscal year 2014 budget request for the Supreme Court, which is one percent of the entire federal judiciary budget, is $74,838,000, a 3 percent reduction from fiscal year 2013.

The ABA, which is highlighting the need for adequate federal court resources during ABA Day in Washington April 16-18, is urging Congress to protect the federal judiciary from future deficit reduction and increase overall funding for fiscal year 2014 to no less than the courts’ original fiscal year 2013 appropriation amount.