Measure seeks to prevent sex trafficking of foster care children

Child trafficking bill clears Congress; ready to be sent to the president

After months of comments, drafting and redrafting, a bill addressing a number of pressing children’s issues, including sex trafficking of children in foster care, was cleared by the Senate Sept. 18 for the president’s signature.

H.R. 4980, sponsored by House Ways and Means Committee Chairman Dave Camp (R-Mich.) and passed by the House July 23, incorporates numerous recommendations from organizations, including the ABA, that responded to the committee’s call for comments on a discussion draft circulated in January. The final version of the bill, which combines provisions from several House and Senate proposals, includes the following ABA-supported provisions to prevent sex trafficking of children in foster care:

- requiring state child welfare agencies to identify, document and provide services to any child or youth over whom the state agency has responsibility when there is reasonable cause to believe the child is, or at risk of becoming, a victim of sex trafficking or another form of trafficking in persons;
- requiring state plans to include the reporting of instances of sex trafficking, as well as the locating of and responding to children who have run away from foster care, to law enforcement authorities;
- requiring state agencies to immediately report information on missing or abducted children or youth to law enforcement authorities for entry into the National Crime Information Center database of the Federal Bureau of Investigation and the National Center for Missing and Exploited Children; and
- including sex trafficking data in the adoption and foster care analysis and reporting system.

The legislation also includes provisions recommended by the ABA that seek to provide more stable environments for those in foster care by ensuring that foster children and youth are participating in age-appropriate extracurricular, enrichment, cultural and social activities. The bill also gives children age 14 and older authority to participate in the development of their own case plans as well as transitional planning for a successful adulthood.

Other provisions require that foster children aging out of the system be provided with appropriate documentation, including birth certificates, Social Security cards, health insurance information, a copy of their medical records, and a drivers’ license or identification care.

Also included in the bill are provisions to improve adoption incentive payments providing financial payments to states for increasing adoption from foster care and to extend the Family Connection Grant Program, which supports efforts to reconnect children in foster care with their families.
## LEGISLATIVE BOXSCORE

<table>
<thead>
<tr>
<th>ABA LEGISLATIVE PRIORITY</th>
<th>HOUSE</th>
<th>SENATE</th>
<th>FINAL</th>
<th>ABA POSITION</th>
</tr>
</thead>
</table>
Supports builds in Congress for preserving cash accounting

Majority of House members submit letter to House leadership

A majority of U.S. House of Representatives members urged the House leadership in a Sept. 11 letter to reject proposals opposed by the ABA that would force many small businesses, including law firms, to shift from the traditional cash accounting method to accrual accounting.

The proposed legislation, prepared by the House Ways and Means and Senate Finance Committees, would require all law firms and other personal services businesses with annual gross receipts over $10 million to use the accrual method of accounting. As a result, many firms would be forced to pay taxes on income long before it is actually received. Law firms and other personal service businesses favor the cash method of accounting – where income is not recognized until payment has been received – because it is simple and generally reflects the way they operate their businesses, i.e., on a cash basis.

The bipartisan group of 233 representatives agreed with the ABA, more than 25 state, local and specialty bars, the American Institute of CPAs and numerous other organizations that the proposals would impose severe financial hardships on the affected businesses, have a dampening effect on business growth across industries, and stifle job creation. The House letter, which is similar to an Aug. 6 letter that 46 senators sent to the Senate Finance Committee, reflects widespread congressional support for the cash method of accounting and growing opposition to the harsh mandatory accrual accounting proposals.

The letters echo concerns that ABA President William C. Hubbard raised earlier this year in a written statement submitted to a key House Small Business subcommittee. In his July 10 statement, Hubbard expressed the ABA’s strong support for preserving cash accounting for law firms and explained in detail how the legislation would create unnecessary new complexity in the tax law, increase compliance costs, reduce economic growth, and harm law firms and their clients. Hubbard also emphasized that the mandatory accrual accounting proposals have become one of the most important issues to ABA members and many state and local bars throughout the country.

“If the tax rules are changed to disconnect cash collection from how income is taxed,” Hubbard warned, “the very business mode upon which may law firms and other personal service businesses operate will be turned on its head.” He also expressed concerns that the proposals would discourage individual professional service providers from joining with other providers to create or expand a firm, even if it makes economic sense and would benefit clients, because it could trigger the costly accrual accounting requirement. “Sound tax policy should encourage – not discourage – the growth of small and medium-sized businesses, including those providing personal services such as law firms, especially in today’s difficult economic environment,” Hubbard emphasized.

“Now that a clear majority of House members—and nearly half of all Senators—have signed letters in support of preserving cash accounting and in opposition to forced accrual accounting, the ABA urges the House Ways and Means and Senate Finance committees to withdraw these harmful proposals,” he said after the House letter was sent.

Additional information and resources on this issue are available here on the ABA’s website.

Second Chance Act clears Senate committee

The Senate Judiciary Committee agreed Sept. 18 to approve S. 1690, legislation strongly supported by the ABA to reauthorize the Second Chance Act, which was enacted in 2008 to provides grants to for state and local reentry programs for ex-prisoners.

“The Second Chance Reauthorization Act is a bipartisan, bicameral effort to ensure that offenders coming out of prison have the opportunity to turn their lives around, rather than returning to a life of crime,” committee Chairman Patrick J. Leahy (D-Vt.), a cosponsor of the bill with Sen. Rob Portman (R-Ohio), said during markup. “Investing in reentry programs improves public safety and save taxpayer dollars,” he emphasized, adding that it also is “the right thing to do.”

As approved by the committee, S. 1690 would authorize $100 million through 2018 for resources to state and local governments as well as community-based organizations to help the more than 650,000 ex-offenders.
Medicare secondary payer bill would protect injured workers

The ABA commended Sens. Bill Nelson (D-Fla.) and Rob Portman (R-Ohio) this month for introducing S. 2731, a bill to reform the administration of Medicare secondary payer provisions in federal law in cases involving workers’ compensation settlements.

The bill, according to ABA Governmental Affairs Director Thomas M. Susman in a letter to Nelson and Portman, would establish “a predictable and efficient set-aside approval process that also provides reasonable protection of injured workers and Medicare.”

Susman thanked the senators for their leadership in creating a “good bipartisan, bicameral agreement.”

Congress passed the Medicare Secondary Payer Act (MSP) in 1980 as a way to control the expanding costs of the Medicare program by identifying specific conditions under which Medicare is a secondary payer when another source of funds for medical treatment is available. If an individual who is or likely to become a Medicare beneficiary is injured and receives damages covering expenses that will be incurred over time, some of that award must be set aside to cover future medical expenses that would otherwise be covered by Medicare.

In 2001, the Centers for Medicare and Medicaid Services (CMS), which administers the Medicare programs, created a system where parties to workers’ compensation settlements may seek review and approval of “set-aside arrangements” designed to protect Medicare’s interests. These reviews, however, are being conducted with inconsistent application of state and/or federal workers’ compensation laws, creating confusion and undue administrative expense. In addition, claims closed by settlement in the past are subject to substantial uncertainty because of potential future action by CMS.

The ABA adopted policy in February 2005 urging Congress to enact legislation incorporating certain principles to address this uncertainty, and several of the principles are key components of the legislation. These include establishing clear criteria for when a set-aside may be reviewed by CMS, establishing an appeal procedure if the parties dispute the CMS ruling regarding the allocation of settlement proceeds, and providing an optional direct payment of set-aside amounts to Medicare.

Susman offered the ABA’s assistance in moving the legislation forward.

Attempt to bring up CRPD fails

The Senate failed to proceed to consideration of the Convention on the Rights of Persons with Disabilities (CRPD) Sept. 17 after one senator objected to a unanimous consent request from Sen. Tom Harkin (D-Iowa).

Harkin’s request called for two hours of debate and no amendments on the treaty, which had been approved July 22 by the Senate Foreign Relations Committee. He emphasized strong support for the CRPD, but Sen. Mike Lee (R-Utah) objected to Harkin’s request, saying that the Senate deserved more than two hours of debate and should have the ability to consider amendments.

Harkin, who has been a leader in the fight for CRPD ratification and will retire at the end of this Congress, expressed his disappointment but said he would continue to work for ratification.

“For the United States to live up to its role as a global leader on disability rights, we must extend the promise of equal access across the globe and bring the Convention on the Rights of Persons with Disabilities to a vote by the full Senate as soon as possible,” he emphasized. “In an increasingly global economy, U.S. citizens with disabilities, including our veterans, too often face barriers when they travel, conduct business, study, or live overseas. Approving this measure would help to break down those barriers,” he added.

The ABA strongly supports ratification of CRPD, which came into force in 2009 and has been ratified by 150 countries. The treaty requires state parties “to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and to promote respect for their inherent dignity.”

Follow the Governmental Affairs Office on Twitter!

You can follow us at @ABAGrassroots for updates on GAO activities as well as the scoop on what is happening inside the Beltway.
ABA recommends actions Congress can take to strengthen families and protect parental rights

The ABA highlighted the association’s long history of working to strengthen families and laid out legislative steps this month that the association maintains Congress could take to enhance the rights and responsibilities of parents.

In a statement for the record of a Sept. 9 hearing on H.J. Res. 50, a proposal to amend the Constitution to state that the liberty of parents to direct the upbringing, education and care of their children is a fundamental right, ABA Governmental Affairs Director Thomas M. Susman explained that the ABA has no position on this proposed constitutional amendment. He emphasized, however, that “there is no shortage of sound policy reforms” in this area that Congress can currently act upon through the regular legislative process.

Susman described the following ABA policy recommendations related to child protection and parental rights.

**Foster Care**
The ABA calls upon Congress to encourage keeping or reunifying children safely with their birth parents by increasing the amount and flexibility of funding available for family preservation and enhanced federal support for family reunification services.

**Legal Counsel for Parents**
The ABA, which has long called for improvements in the provision of legal counsel for parents when the parent-child relationship is potentially affected by court action, has adopted the Standards of Practice for Attorneys Representing Parents in Abuse and Neglect Cases. The association supports H.R. 1096, a bill to help provide quality representation through each state’s federally supported Court Improvement Program.

In addition, the ABA Center on Children and the Law sponsors the National Project to Improve Representation for Parents Involved in the Child Welfare System, which, among other things, provides statewide and local assessments of parent representation systems and provides training and technical assistance for parents, attorneys, courts and legislators.

**Military Families**
The ABA urges Congress to direct greater attention to the hundreds of thousands of children of military families who are separated from their mothers or fathers due to military assignments. The ABA supports the Uniform Deployed Parents Custody Visitation Act promulgated by the National Conference of Commissioners on Uniform State Law to protect the parental rights of military members.

**Incarcerated Parents**
Congress should help protect parental rights of incarcerated parents through support for initiatives that facilitate contact and communication between those parents and their children. The ABA has urged Congress to eliminate restrictions that prohibit recipients of Legal Services Corporation funds from providing legal assistance to incarcerated parents when they are dealing with family law issues. The association also supports federal support for prisoner reentry programs that include family reunification services upon release.

**Child Support**
The association has urged Congress to pass legislation to ensure uniform laws and procedures in child support cases, including requiring new employees to report child support obligations and payment through payroll withholding and requiring employers to honor those orders, and requiring improved training for those involved in child support enforcement.

**International Law**

Save the Date!

ABA Day in Washington
April 14-16, 2015
For more details, go to the ABA Day page on the Governmental Affairs Office website.
ABA president urges action on bill to protect IOLTAs

ABA President William C. Hubbard urged action Sept. 10 on S. 2698, legislation that includes a provision that would allow credit unions to insure Interest on Lawyer Trust Accounts (IOLTAs) for up to $250,000, the same level of coverage provided by banks.

In a letter to the Senate Committee on Banking, Housing and Urban Affairs, Hubbard explained that S. 2698 and S. 2699, a bill containing only the IOLTA credit union provision, would ensure that client funds are protected regardless of whether an IOLTA is in a credit union or in a bank. The House passed H.R. 3468, its version of S. 2699, in May.

All 50 states have IOLTA programs, and 45 states require lawyers to place client funds in IOLTAs if the funds cannot earn interest for the client in excess of the costs incurred to secure that interest. Banks in turn forward the interest on these accounts to the state IOLTA programs, which use the money to fund a variety of charitable causes.

Hubbard pointed out that close to 90 percent of grants awarded by IOLTA programs go to legal aid offices and pro bono programs providing legal aid to people at or near the poverty line, including veterans, the working poor and persons with disabilities.

While banks have Federal Deposit Insurance Corporation (FDIC) coverage providing $250,000 of protection per client per institution, the National Credit Union Administration (NCUA) provides coverage for funds held in IOLTAS only if a client is a member of the credit union or the credit union is designated as low-income.

“Granting credit unions the ability to protect funds held in IOLTAs could also have a positive impact on states’ IOLTA programs, as credit unions may offer higher interest rates than banks,” Hubbard said.

During a Sept. 16 hearing on small depository institutions before the Senate committee, Sen. Mark Warner (D-Va.), a member of the committee and a cosponsor of S. 2698 and S. 2699, emphasized the importance of the IOLTA credit union legislation.

In addition to the ABA, the legislation has the support of the NCUA, the National Association of Federal Credit Unions, and the Credit Union National Association.

Judicial Vacancies/Confirmations—113th Congress* (as of 9/24/14)

<table>
<thead>
<tr>
<th>Court</th>
<th>Vacancies</th>
<th>Pending Nominations</th>
<th>Confirmations</th>
</tr>
</thead>
<tbody>
<tr>
<td>US Supreme Court (9 judgeships)</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>US Courts of Appeals (179 judgeships)</td>
<td>7</td>
<td>0</td>
<td>23</td>
</tr>
<tr>
<td>US District Courts (678 judgeships)</td>
<td>50</td>
<td>33</td>
<td>82</td>
</tr>
<tr>
<td>Court of International Trade (9 judgeships)</td>
<td>3</td>
<td>1</td>
<td>2</td>
</tr>
<tr>
<td>Totals</td>
<td>60</td>
<td>34</td>
<td>107</td>
</tr>
</tbody>
</table>

*Includes territorial judgeships
APPROPRIATIONS: President Obama signed P.L. 113-164 (H.J. Res. 124) on Sept. 19 to keep the government running through Dec. 11 of this year. The $1.012 billion measure will maintain current fiscal year 2014 appropriation levels for most of the government for the first six weeks of fiscal year 2015, which begins Oct. 1. Some additional funding is provided, however, for Veterans Administration disability claims processing and efforts to fight the Ebola outbreak in Africa. Also included in the law are provisions allowing the Department of Homeland Security funding flexibility for Customs and Border Protection to address the influx of immigrants at the U.S. southwestern border. In addition, the Department of Defense is given temporary authorization to provide training and equipment to Syrian rebels for fighting Islamic State of Iraq and the Levant (ISIL) forces. Further action on fiscal year 2015 appropriations will occur after Nov. 12, when Congress returns following the mid-term elections.

HOME AND COMMUNITY-BASED SERVICES: Rep. Matt Cartwright (D-Pa.) introduced a bill Sept. 18 that would require Medicaid plans to give certain individuals with disabilities the right to receive long-term care in a home and community-based setting (HCBS) to reduce unnecessary institutionalization. Cartwright’s bill, H.R. 5547, is identical to S. 2515, a Senate bill introduced earlier this year by Sen. Tom Harkin (D-Iowa). The U.S. Supreme Court decision in Olmstead v. L.C., 527 U.S. 581 (1999), held that under the Americans with Disabilities Act individuals have the right to be placed in community settings rather than institutions when deemed appropriate by the state’s health care professionals, when desired by the individual, and when the request can be reasonably accommodated. “The ABA believes that Congress should continue to expand the availability of HCBS as a viable long-term option,” ABA Governmental Affairs Director Thomas M. Susman wrote in a Sept. 19 letter commending Cartwright for introducing the H.R. 5547. Susman said the bill, known as the Community Integration Act of 2014, would “help remove the barriers that currently stand in the way of certain individuals’ having the opportunity to receive care in the community setting – an ideal that was expressed in Olmstead,” he said.

UNACCOMPANIED CHILDREN: ABA President William C. Hubbard expressed the association’s strong support this month for a city ordinance approved Sept. 16 by the San Francisco Board of Supervisors that will allocate more than $2.1 million over the next two years to provide legal services to unaccompanied children and families in removal proceedings in the San Francisco Immigration Court. “While many law firms and non-governmental organizations, including the ABA, are working to increase pro bono representation, there are simply not enough resources currently available to ensure representation for all unaccompanied children placed in removal proceedings,” Hubbard emphasized in a letter to the board the day before the vote. He noted the significant increase in the number of unaccompanied immigrant children seeking refuge in the United States over the past year. He said this “tremendous influx” reflects a regional humanitarian crisis as children from El Salvador, Guatemala, Honduras and Mexico flee abuse, violence, death threats and neglect. Many of these children are eligible to apply for existing forms of immigration relief, but there is no right to appointed counsel for unaccompanied children in removal proceedings. As a result, these children frequently have no choice but to represent themselves against experienced government lawyers and face insurmountable obstacles due to the complexity of U.S. immigration laws, their age and lack of education, and language and cultural barriers. “Fundamental principles of fairness and due process demand that these children receive legal representation to represent their interests throughout the immigration process,” Hubbard said, pointing out that access to counsel weighs tremendously on whether a child’s eligibility for relief is identified and in securing immigration relief and permanent protection in the United States.
Senate vote on Paycheck Fairness Act falls short

The Senate failed Sept. 15 to proceed to a vote on the merits of the Paycheck Fairness Act, a bill to update the Equal Pay Act of 1963.

Supporters of the legislation, S. 2199, could not garner the 60 votes needed to invoke cloture to end debate and proceed to a vote on passage. The 52–40 cloture vote came just five days after the Senate had voted 73–25 to allow floor consideration of the legislation.

The bill would prohibit an employer from paying unequal wages to male and female workers who perform jobs under similar work conditions that require substantially equal skills, effort, and responsibility unless there is a legitimate reason for a pay differential. The measure also would prohibit employers from retaliating against employees who inquire about or disclose their wages to other employees as part of a complaint or investigation.

In a Sept. 9 letter, ABA Governmental Affairs Office Director Thomas M. Susman urged senators to allow a Senate vote on S. 2199.

“This legislation has the overwhelming support of working men and women across the country who want this nation to live up to its expressed commitment to equal pay for equal work,” Susman wrote. His letter also addressed misconceptions about the bill, explaining that the measure would not:

- force businesses to eliminate the existing wage gap by substantially increasing female employees’ salaries;
- make employers liable for every single wage differential;
- set rules for how employers must determine pay;
- encourage an uptick in lawsuits; or
- eviscerate the “factor other than sex” defense.

ABA policy adopted in 2010 urges Congress to pass legislation to “provide more effective remedies, procedures and protections to those subjected to pay discrimination, including discrimination on the basis of gender, and would help overcome the barriers to the elimination of such pay discrimination that continue to exist.”

According to The Gender Wage Gap: 2013, a new report from the Institute for Women’s Policy Research, the gender wage gap for full-time/year-round workers is 21.7 percent, and women’s median annual earnings in 2013 were $39,157 compared with $50,033 for men with no significant improvement from 2012. The report concluded that if the rate of change stays the same, it will take until 2058 for the wage gap to close.

Second Chance Act

continued from page 3

who are released from prison each year. Grants also would be available to non-profit organizations that promote family-based substance abuse treatment and training in technology careers. The legislation would direct the attorney general to review research into education methods used in prisons and jails, identify best practices and implement them. The bill also includes provisions to ensure accountability by requiring periodical audits of grantees.

In correspondence earlier this year to the judiciary committees in the House and Senate, ABA Governmental Affairs Director Thomas M. Susman emphasized that research confirms that comprehensive, coordinated services reduce recidivism by helping formerly incarcerated individuals find stable employment and housing. By providing the resources needed to coordinate reentry services and policies at the state and local levels, Second Chance Act reauthorization “will ensure that the tax dollars spent on correction do not simply fuel a revolving door in and out of prison,” he said.

Strengthening Families

continued from page 5

Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children, a treaty that addresses custody matters and other measures taken for the protection of parents and of children and their property.

Other Areas

The association recommends establishment of a national computerized child custody registry to combat parental kidnapping, support for job-protected parental leave, and development of creative mechanisms for extending the availability and affordability of quality child care.

No further action is scheduled for H.J. Res. 50 or S.J. Res. 37, an identical Senate resolution.
SEER sponsors science and environmental law seminar

The ABA Section of Environment, Energy and Resources (SEER), with the assistance of the Governmental Affairs Office, brought together the country’s leading experts on science and environmental law Sept. 12 to present a one-day seminar in Washington, DC. The goal of the seminar was to advance the knowledge and understanding of key areas in which law and science intersect in the practice of environmental law. The event was attended by several Capitol Hill staff.

Topics included trends in the presentation of scientific evidence, effective use of scientific evidence in the federal rulemaking process, scientific evidence in court, and laws relating to climate change. Jennifer Lee, senior associate general counsel and policy advisor for the White House Office of Science and Technology Policy, spoke about the importance of leveraging the vast resources of the private sector in order to help resolve some of the most difficult challenges across the government. One successful federal program she highlighted is Challenge.gov, which seeks innovative solutions from the public and awards government prize money to people who are able to overcome particular challenges in a wide range of areas.

SEER is professionally, politically, regionally, and culturally diverse, making the 10,000-member section a unique and deep source of knowledge on environment, energy, and resource issues from many different perspectives. SEER’s goal is to ensure that its subject-matter committees, programs and written resources are “go-to” reference tools for members of Congress and their staff.

Those planning and participating in the Sept. 15 seminar included (from left): Adrienne Timmel, Keller and Heckman; Karen Carr, Arent Fox; SEER Education Officer Amy L. Edward, Holland & Knight; and Tabby Waqar, Small Business Administration.

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. © 2014 American Bar Association. All rights reserved. Please address correspondence to:

(202) 662-1017
Rhonda J. McMillion, editor; Rhonda.McMillion@americanbar.org
Deanna Falcone, legislative associate; Deanna.Falcone@americanbar.org