ABA supports introduction of legislation to reauthorize the Second Chance Act

The ABA expressed support this month for introduction of legislation to reauthorize the Second Chance Act of 2008, which provides resources to improve success rates for people released from prison and jail.

“The ABA, with over 350,000 members from across the nation, believes that reauthorization of the 2008 act is essential to providing continuity for its evidence-based and cost-effective support for programs that improve reentry from prisons, jails and juvenile facilities and that serve, not incidentally, to advance public safety,” ABA Governmental Affairs Director Thomas M. Susman wrote in a June 4 letter to Sens. Rob Portman (R-Ohio) and Patrick J. Leahy (D-Vt.), who introduced a Second Chance Act reauthorization bill in the Senate that day, and Reps. James Sensenbrenner Jr. (R-Wis.) and Danny Davis (D-Ill.), who plan to introduce a House bill shortly.

Susman pointed out that more than half of the 9 million individuals released from prisons and jails each year are reincarcerated within three years of their release. He emphasized, however, that this high level of recidivism is not inevitable. Research confirms that targeted “smart-on-crime” policies supporting comprehensive coordinated services can help formerly incarcerated individuals find stable employment and housing, thereby reducing recidivism and reliance on incarceration and, as an additional public benefit, reducing public spending on corrections.

Susman said that state and local governments, as well as community and faith-based organizations, are in dire need of the bill’s resources, which coordinate reentry services and policies so that tax dollars spent on corrections do not “simply fuel a revolving door in and out of prison.”

“This legislation builds on the success of the original law and takes important new steps to ensure that people coming out of prison are given a fair chance to turn their lives around,” Leahy said, emphasizing that it would be irresponsible not to continue supporting programs that are succeeding across the country with Second Chance Act grants. He noted that North Carolina, with six grants, has reduced its recidivism rate by 18.1 percent since 2007 and that Georgia’s recidivism rate has dropped by 13.5 percent through 13 grants.

In addition to provisions improving state and local grant programs and promoting accountability of grantees, the Senate bill, S. 1513, includes provisions to help decrease the large prison population. The fastest growing segment of inmates – prisoners age 50 and older – cost 8 percent more on average to incarcerate than younger inmates primarily because of higher medical expenses, according to the Justice Department’s Office of the Inspector General. Costs for older inmates can be as high as two to three times more, and those costs are

see “Second Chance Act,” page 5
### LEGISLATIVE BOXSCORE

<table>
<thead>
<tr>
<th>LEGISLATIVE ISSUE</th>
<th>HOUSE</th>
<th>SENATE</th>
<th>FINAL</th>
<th>ABA POSITION</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Federal Courts.</strong> P.L. 113-235 (H.R. 83), fiscal year 2015 consolidated and further continuing appropriations legislation, included $6.7 billion for the federal judiciary. The president’s fiscal year 2016 budget request includes $6.96 billion for the federal judiciary.</td>
<td>Appropriations subcommittee held a hearing on judicial funding on 3/25/15. Appropriations Committee approved $6.9 billion for the federal judiciary on 6/17/15.</td>
<td>Appropriations subcommittee held a hearing on judicial funding on 3/24/15. President signed P.L. 113-235 (H.R. 83) on 12/16/14.</td>
<td>Supports adequate judicial resources and opposes efforts to infringe on separation of powers or undermine the judiciary.</td>
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Bipartisan efforts seek fair and balanced patent overhaul bill

ABA President William C. Hubbard commended Senate Judiciary Committee Chairman Charles E. Grassley (R-Iowa) and Ranking Member Patrick J. Leahy (D-Vt.) this month for their efforts to develop patent overhaul legislation that represents a “fair and balanced response to the abusive patent enforcement practices by those who acquire and hold patents primarily to extract extortionist settlement and judgments, and not to provide products and services to the public.”

The committee approved S. 1137, the Protecting American Talent and Entrepreneurship Act of 2015 (PATENT Act), by a 16-4 vote on June 4. Hubbard, in a June 1 letter to Grassley and Leahy, noted that a number of the bill’s provisions reflect “bipartisan solutions to extremely complex and contentious issues.”

Hubbard indicated that the legislation, which improves upon versions considered during the 113th Congress, addresses the ABA’s concerns that the earlier proposals would have established separate rules of procedures in the courts applicable only in patent cases. These proposals would have overridden the congressionally established system under which the federal courts develop rules of procedure and case management for all litigation.

Hubbard said that Section 6 of the bill would provide guidance rather than an inflexible mandate to the Judicial Conference in developing rules to address discovery issues in patent cases. The section also includes an additional safety valve to authorize a district court, applying the rules developed by the Judicial Conference, to modify the requirement of the rules for good cause shown. He encouraged the sponsors to apply this guidance to pleading requirements and discovery limits as well.

Hubbard commended the bill’s authors for including in the fee-shifting section of the bill provisions that properly place the burden of proof on the prevailing party in patent cases. Before making an attorney fee award, the court must find that the position or conduct of the non-prevailing party was not objectively reasonable in law or fact, he explained.

Hubbard also recognized the sponsors for including provisions to authorize direct enforcement actions by the Federal Trade Commission against parties who send out bad-faith demand letters alleging patent infringement in order to obtain extortionist settlements.

Following the Senate committee’s approval of S. 1137, the House Judiciary Committee approved H.R. 9, its patent overhaul legislation, on June 11 by a 24-8 vote. The House bill was amended by the committee to bring it more in line with the Senate bill in several of the areas highlighted in Hubbard’s letter.

Both bills are ready for floor action in their respective chambers, and President Obama has expressed support for enactment of bipartisan legislation designed to curtail abusive patent litigation and improve transparency in the patent system.

ABA seeks to preserve Public Service Loan Forgiveness

The ABA is urging Congress to preserve the federal Public Service Loan Forgiveness Program (PSLF), established in 2007 to forgive federal student loans for individuals who work in a wide range of public service jobs, including jobs in government and nonprofit charitable organizations.

The program provides forgiveness of remaining debt after 10 years of eligible employment and qualifying loan payments, and the first group of public service workers will be eligible for forgiveness in 2017. Those eligible for PSLF include prosecutors, public defenders and legal aid lawyers.

Recent proposals, including the president’s fiscal year 2016 budget, would cap the maximum benefit under PSLF at $57,500, and the congressional budget resolution for fiscal year 2016 calls for PSLF’s repeal. Such changes would directly impact the legal community, where the greatest common obstacle in recruiting and retaining lawyers for public-sector positions has been the substantial student debt that borrowers incur to pursue a law degree. The average student debt accumulated by law students, including debt from undergraduate studies, is over $100,000.

The ABA is opposed to any efforts to make sweeping changes or otherwise undermine PSLF and is urging individuals to write to their members of Congress to express their support for the program. Click here for more detailed information about PSLF and what you can do to help preserve this valuable program.
ABA sponsors first LGBT Advocacy Day

Participants came from across the country to Washington last month for the first LGBT Advocacy Day sponsored by the ABA Commission on Sexual Orientation and Gender Identity (SOGI) and coordinated by the association’s Governmental Affairs Office.

SOGI leads the ABA’s commitment to diversity, inclusion and full and equal participation by lesbian, gay, bisexual and transgender (LGBT) persons in the association, the legal profession and society. Those attending the event visited their senators and representatives to discuss issues of importance to the LGBT community and urge support for the following legislation:

• S. 447/H.R. 864 (Juror ACCESS/Non-Discrimination Act), which would amend 28 U.S. Code § 1862 to include sexual orientation and gender identity in the prohibition against exclusion of potential federal jurors on the basis of race, color, religion, sex, national origin or economic status; and

• S. 302/H.R. 590, the International Human Rights Defense Act, which would integrate the protection of LGBT persons into U.S. foreign policy and direct a coordinated response to address international violence and discrimination against LGBT persons through a Special Envoy for the Human Rights of LGBT Peoples.

In addition to visits on Capitol Hill, events during the advocacy day included a White House briefing by government officials and a briefing on the issues from ABA Governmental Affairs Director Thomas M. Susman and Grassroots Operations Director Jared Hess.
The ABA expressed support and offered comments this month on a discussion draft for legislation aimed at helping reduce the prevalence and length of foster care by providing support for families in crisis.

In a June 12 letter to Senate Finance Committee Orrin G. Hatch (R-Utah) and Ranking Member Ron Wyden (D-Ore.), ABA Governmental Affairs Director Thomas M. Susman commended Wyden and the committee for efforts to advance meaningful legislation to address the desirability of allowing children to remain in their homes with their families.

The draft legislation, which would amend Title IV of the Social Security Act, would alter the act’s funding formula in Sections B and E to target families in greatest need by providing more services to those in the riskiest geographical areas, such as neighborhoods with higher rates of poverty, child maltreatment and placement in foster care. In the comments, Susman recommended that legal services be added to the services provided, pointing out that high-quality legal representation for children and parents improves outcomes, reduces foster care placement, and lowers government costs.

“If investment is made in quality legal services, systemic functioning will improve: more families will receive individualized services, fewer children will suffer the trauma of unnecessary removals, children removed from home will be returned sooner and with fewer disruptions, and taxpayer dollars will be saved,” Susman explained. He said a crucial step toward securing quality representation would be allowing a portion of costs for representation to be reimbursed under Title IV-E, which is already an option available for agency attorney costs.

He cited the success of non-profits such as New York City’s Center for Family Representation, where more than 50 percent of its clients’ children were able to avoid placement in foster care, and the Detroit Center for Family Advocacy, where the cases of 50 families were closed without the child being placed within the child welfare system.

Wyden, in releasing the discussion draft for comment, said, “This proposal is meant to address the lopsided structure of federal child welfare financing in which the vast majority of dollars are reserved for payments only after a child enters foster care – to be used for prevention and other services to help reunify families and prevent a child’s removal from the home.

He said that while the discussion draft of the legislation identifies many services critical to assisting families and preventing a child’s removal, the draft does not include services critical to creating stability in a child’s home such as mental health services, employment assistance, and in-home services.

Wyden plans to introduce legislation after considering the comments and recommendations.

Second Chance Act

continued from front page

increasing at a faster rate than for other inmates. The legislation would make inmates 60 and older eligible for release to home detention after serving two-thirds of their sentences and would provide prison officials with more discretion to recommend the early release of older inmates, who are less likely to re-offend upon their release.

“This legislation sends a message that there’s a better way than living a life of crime,” Portman said, emphasizing that the ultimate goal of the legislation is to “make families and communities strong, save taxpayer dollars and improve the criminal justice system.”
ABA offers perspective on cybersecurity reform

Cites five guiding principles for legislation

The ABA offered Senate leaders the ABA's perspective on comprehensive cybersecurity reform this month and provided five guiding principles for members of Congress to consider as they develop cybersecurity legislation.

“The ABA has long recognized that we must make it a priority to prevent unauthorized intrusions into the computer systems and networks utilized by lawyers and law firms, and we recently adopted policy calling upon all private sector organizations to maintain appropriate cybersecurity measures,” ABA Governmental Affairs Director Thomas M. Susman wrote June 1 to Senate Majority Leader Mitch McConnell (R-Ky.) and Senate Minority Leader Harry Reid (D-Nev.).

The ABA principles recognize that:

• public and private frameworks are essential to successfully protect United States assets, infrastructure and economic interests from cyber attacks;

• robust information sharing and collaboration is needed between government agencies and private industry to manage global cyber risks;

• legal and policy environments must be modernized to stay ahead of, or at least keep pace with, technological advancement;

• privacy and civil liberties must remain a priority when developing cybersecurity law and policy; and

• training, education and workforce development of government and corporate leadership, technical operators and lawyers requires adequate investment and resources in cybersecurity to be successful.

Cybersecurity legislation moving through Congress this year focuses on information sharing among private entities and between those entities and the federal government. In April, the House passed two bills, H.R. 1560 and H.R. 1731, and the Senate Intelligence Committee approved S. 754.

While the bills include different approaches to sharing and protecting information, they all have provisions limiting the use of shared information to cybersecurity and law enforcement purposes and shielding information shared with the federal government from public disclosure to protect privacy and civil liberties. In addition, all of the bills would require reports to Congress on the impact of the legislation.

Although the House bills passed by substantial margins, S. 754 became the center of controversy when the bill was offered as an amendment on the Senate floor to H.R. 1735, the annual defense authorization bill.

Opposition from Democrats led to a 56-40 vote against invoking cloture on the amendment, and it was withdrawn from consideration. The Senate bill is expected to be considered separately on the floor at a later date.

Judicial Vacancies/Confirmations—114th Congress*
(as of 6/24/15)

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<tr>
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*Includes territorial judgeships
HEALTH PLANNING: Sens. Mark Warner (D-Va.) and Johnny Isakson (R-Ga.) introduced ABA-supported legislation June 10 to help ensure that individuals with advanced illness receive the support they need to make informed decisions about their treatment and care. S. 1549, the Care Planning Act, would authorize Medicare to reimburse health care professionals who provide a voluntary, structured discussion about the patient’s goals, illness, and treatment options. A written plan would be developed to reflect the choices made by patients in consultations with members of their health care team, family members and friends. The ABA, which has a long history of strongly promoting the value of advance care planning and the use of advance health directives, recently urged widespread support of protocols such as Physician Orders for Life-Sustaining Treatment (POLST) and strengthening the Patient Self Determination Act. The association also supports legislation that promotes access to and financing of high-quality, comprehensive long-term supportive services for persons with advance illness. “The ABA supports the Care Planning Act’s emphasis on meaningful planning services as a regular component of care for Medicare beneficiaries,” ABA Governmental Affairs Director Thomas M. Susman wrote June 12 to Warner and Isakson. The bill’s provisions, he said, “will give patients the freedom to make informed decisions about their care and ensure that these wishes are honored.” Susman noted that the legislation is further strengthened by including quality metrics to measure patients’ stated goals, values and preferences with documented care plans, and said that expanded portability of care plans is a major step forward in giving patients more control over their health care options. More than 40 health and senior advocacy groups have endorsed the legislation, which Warner said takes a “patient-centered approach by making sure more information is available to patients and their families, and by ensuring that patients have an opportunity to discuss their treatment options, plan for their future care, and make their choices known.”

LEGAL SERVICES CORPORATION (LSC): LSC would be funded at $385 million – a $10 million increase – under the provisions of a fiscal year 2016 appropriations bill approved this month by the Senate Appropriations Committee. The Senate committee’s amount is $85 million more than the House approved for the LSC in its version of the funding bill for Commerce, Justice, Science and Related Agencies that passed June 3 by a vote of 242-183. The ABA supported President Obama’s request of $452 million for the program, and ABA President William C. Hubbard emphasized in statements submitted to the House and Senate this spring that more funding is needed to address the growing need for civil legal services for low-income Americans. When people are unable to resolve their civil legal matters, they are more likely to require other forms of publicly funded assistance, he explained. The Senate bill now moves to the full Senate for consideration.

MEDICARE SECONDARY PAYER: The ABA supports the introduction June 4 of House and Senate bipartisan legislation to reform the administration of the Medicare secondary payer provisions in cases involving workers’ compensation settlements. Congress passed the Medicare Secondary Payer Act 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. A system put in place in 2001 by the Centers for Medicare and Medicaid Services (CMS) was intended to handle workers’ compensation settlements but instead has created confusion and undue administrative expenses. According to an ABA statement, the legislation – S. 1514, introduced by Sens. Bill Nelson (D-Fla.) and Rob Portman (R-Ohio), and H.R. 2649, introduced by Reps. Dave Reichert (R-Wash.) and Mike Thompson (D-Calif.) – would provide for improved administration of Medicare in conjunction with settlements in these cases and determine the appropriate amount to be set aside and/or paid to Medicare. ABA policy adopted on the issue in 2005 and reaffirmed in 2011 urges Congress to enact legislation incorporating certain principles, including establishing clear criteria for when a set-aside may be reviewed by CMS and putting an appeal procedure in place.
Lawyers gather in England to celebrate Magna Carta’s 800th anniversary

In celebration of the 800th anniversary of the sealing of Magna Carta, ABA President William C. Hubbard led a rededication ceremony June 15 at the ABA memorial that was erected in 1957 at Runnymede, England.

Magna Carta, sealed in 1215 by King John of England in response to a barons’ rebellion, spelled out principles that have served as the basis for modern democracies and the rule of law.

The ceremony was attended by a host of dignitaries, including members of the royal family.

“We return to Runnymede today because the principles of Magna Carta define, and must continue to define, who we are and who we must be if we are to have justice and if we are to have peace in our world,” Hubbard said.

U.S. Attorney General Loretta Lynch, also speaking at the event, said, “Today, we not only pay tribute to the source of our legal doctrines—we reaffirm our devotion to its values and recommit ourselves to the service of its most treasured ideals.”

Princess Anne thanked the ABA for honoring the site of the sealing of Magna Carta. “The values gleaned from Magna Carta provide us with one of our most basic doctrines: that no person is above the law,” she said. “It is imperative that we convey the principles of Magna Carta to all people.”

The ABA London Sessions, held June 11-15, featured numerous continuing legal education programs on various topics, including tort liability, electronic information for litigation, legal ethics, regulations of insider training and market abuse, and global corporations and the rule of law.

Queen Elizabeth II is greeted by ABA President William C. Hubbard and ABA President-elect Paulette Brown during the Magna Carta festivities.