ABA joins with health care organizations in call to action to fight gun violence

ABA President William C. Hubbard recently announced that the ABA has joined with eight national health care organizations in a call to action to address the public health crisis of gun violence in the United States and to apply public health approaches to curtailing such violence.

The organizations are the American Academy of Family Physicians, American Academy of Pediatrics, American College of Emergency Physicians, American Congress of Obstetricians and Gynecologists, American College of Physicians, American College of Surgeons and American Psychiatric Association.

“Firearm-Related Injury and Death in the United States: A Call to Action from 8 Health Professional Organizations and the American Bar Association,” issued Feb. 27, advocates a series of measures aimed at reducing firearm-related injuries and death, including the following recommendations:

- universal background checks of gun purchasers;
- elimination of physician “gag laws” that prohibit doctors from discussing a patient’s gun ownership or safe use of firearms, and warning of the dangers of firearms;
- restrictions on the manufacture and sale of military-style assault weapons and high-capacity magazines for civilian use; and
- increased research to support the reduction of firearm-related injuries and death.

Two additional recommendations were offered by the health care organizations:

- improved access to mental health care without broadly prohibiting all people with mental or substance use disorders from purchasing firearms; and
- opposition to blanket reporting laws that require physicians to report patients with mental or substance use disorders because these laws may stigmatize patients and keep them from seeking treatment.

Earlier in February, the ABA Standing Committee on Gun Violence released Gun Violence Laws and the Second Amendment: A Report of the American Bar Association, which states that while the ABA respects all reasoned views in the matter of gun violence, the association rejects the notion that the Second Amendment, relating to the right to bear arms, bars efforts to stem gun violence.

Since 1965, the ABA House of Delegates has approved nearly 20 separate resolutions aimed at reducing firearm-related deaths and injuries.

In addition to citing the grave physical and emotional toll of gun violence, the report noted the overwhelming economic costs, which total $100 billion a year when direct and indirect medical, legal and societal costs are considered.

see “Gun violence,” page 9
<table>
<thead>
<tr>
<th>LEGISLATIVE ISSUE</th>
<th>HOUSE</th>
<th>SENATE</th>
<th>FINAL</th>
<th>ABA POSITION</th>
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<tr>
<td><strong>Criminal Justice.</strong> S. 353 and H.R. 706 would extend the safety valve to certain non-violent offenders and reduce lengthy sentences for non-violent offenders. S. 255 and H.R. 540 would amend the federal criminal code regarding civil asset forfeiture.</td>
<td>Judiciary subc. held a hearing on civil asset forfeiture on 2/11/15.</td>
<td></td>
<td>Supports federal sentencing reform to address explosive growth in prison population and costs. Supports certain civil asset forfeiture reforms. Supports funding for federal and state indigent defense programs. See pages 1, 5, 8 and 9.</td>
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<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></td>
<td>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. See page 3.</td>
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<td><strong>Legal Services Corporation (LSC).</strong> P.L. 113-235 (H.R. 83), fiscal year 2015 consolidated and further continuing appropriations legislation, included $375 million for LSC. The president’s fiscal year 2016 budget request includes $452 million for the program.</td>
<td></td>
<td>President signed P.L. 113-235 (H.R. 83) on 12/16/14.</td>
<td>Supports an independent, well-funded LSC.</td>
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ABA president urges businesses, suppliers to adopt policies to prevent labor trafficking and child labor

ABA President William C. Hubbard encouraged the chief executive officers and general counsel of all U.S. companies in the Fortune 500 this month to help fight the scourge of human trafficking by adopting and implementing policies consistent with the Model Principles of the ABA Model Business and Supplier Policies on Labor Trafficking and Child Labor.

The association’s Model Principles, Hubbard said, are consistent with the UN Guiding Principles on Business and Human Rights and were designed to provide a practical and flexible tool to help companies and suppliers develop (or refine) their own policies commensurate with the risk and other variables presented in their specific businesses.

Calling human trafficking a form of “modern day slavery,” Hubbard emphasized in his March 3 letter that recent statistics show that approximately 20.9 million men, women and children are subject to forced labor around the world, and 168 million children are in situations of child labor.

“Corporations have the power to play a significant role in eradicating these pervasive human rights abuses,” Hubbard said. Although a majority of the largest U.S. companies with global supply chains have already adopted policies on labor trafficking, Hubbard noted, “many of the existing policies could be further improved and better implemented through consideration of the ABA’s Model Principles.”

The ABA model includes two similar sets of principles – one for businesses and one for suppliers – encouraging the entities to: (1) prohibit labor trafficking and child labor in their operations; (2) conduct a risk assessment of the risk of labor trafficking and child labor and continually monitor implementation of the policy; (3) train relevant employees, engage in continuous improvement, and maintain effective communications mechanisms with suppliers; and (4) devise a remediation policy and plan that addresses remediation for labor trafficking or child labor in their operations.

The ABA also has developed an online Database of Resources to help companies develop and implement their policies.

House panel revives debate on Rule 11 sanctions

Witnesses appearing March 17 before the House Judiciary Subcommittee on the Constitution and Civil Justice offered opposing views on H.R. 758, a bill that would amend Rule 11 of the Federal Rules of Civil Procedure to require, rather than permit, the imposition of monetary sanctions against lawyers for filing non-meritorious claims.

The legislation, which is opposed by the ABA, would circumvent the Rules Enabling Act to eliminate provisions adopted in 1993 allowing parties and their attorneys to avoid sanctions by withdrawing frivolous claims within 21 days after a motion for sanctions is served. The current system, which gives judges the option to sanction parties, replaced a mandatory sanctions provision that was in place from 1983 to 1992 but had been shown to increase non-meritorious lawsuit filings rather than reduce them.

During the hearing, Robert S. Peck, president of the Center for Constitutional Litigation, emphasized that the judiciary and the legal profession overwhelmingly support the Rule 11 amendments that went into effect in 1993 and that H.R. 758, which would undo those changes, is not needed. “The case for it is weak, while experience teaches that its passage would have calamitous consequences, increasing the expanse of litigation, distracting parties and judges from the substance of cases, and slowing the progress of justice in the courts,” said Peck, who was testifying on his own behalf.

He also explained that the Rules Enabling Act, which would be bypassed by the bill, establishes a demanding process for amending the Federal Rules of Civil Procedure. Under that act, the Judicial Conference of the United States drafts proposed rules and amendments, makes them available for public comment and submits them to the U.S Supreme Court after Judicial Conference approval. The Supreme Court transmits the proposals to Congress, which retains the final authority to reject, modify or defer any rule or amendment before it takes effect.

Other witnesses supported the legislation. Elizabeth Milito, senior executive counsel of the National Federation of Independent Business Small Business Legal Center, stressed that...
ABA supports collection of data for annual Equal Pay Report

The ABA recently applauded the goals of a proposed rule for collecting summary pay data from federal contractors and subcontractors to better target activities of the Office of Federal Contract Compliance Programs (OFCCP).

OFCCP is responsible for enforcing laws requiring that those who do business with the federal government follow the fair and reasonable standards that they do not discriminate on the basis of sex, race, color, religion, national origin, disability or status as a protected veteran.

Last April, President Obama issued a memorandum entitled “Advancing Pay Equality Through Compensation Data Collection” instructing the secretary of Labor to develop a rule to collect summary data on employee compensation by sex, race and ethnicity within specified broad job categories. To minimize administrative burdens, the new data collection would be integrated into existing reporting obligations and would apply to companies with more than 100 employees and that hold federal contracts or subcontracts worth $50,000 or more for at least 30 days.

“The ABA has long supported as an indispensable step to eradicating discrimination in the workplace and the justice system the systematic collection of data to measure the scope of the problem, inform public debate, and develop fact-based remedies,” ABA Governmental Affairs Director Thomas M. Susman wrote Jan. 5 in comments to Debra A. Carr, director of the OFCCP Division of Policy and Program Development.

Susman emphasized that the ability of OFCCP to identify and remedy pay discrimination in the federal contractor workforce, comprising more than 20 percent of all U.S. workers, is critical to closing the pay gap, which adversely affects women, families and the economy.

He noted that the collected data will be analyzed and aggregated to establish industry level standards for pay disparities, which will be used to direct OFCCP’s limited enforcement resources toward entities for which reported pay data suggests potential pay violations.

The proposed rule also would provide for the sharing of the data with federal contractors and the public to raise public awareness of the existence of discriminatory pay disparities and provide important information to prospective employees, enable employers to review their own pay data using the same metrics as OFCCP, and encourage voluntary compliance.

Susman also indicted that the collected and aggregated data shared through implementation of the proposed rule also “may convince the public and Congress of the pervasiveness of wage discrimination and provide the impetus needed to enact more effective laws that will make equal pay for equal work a reality for both public and private sector workers.”

small business owners are easy targets for lawsuits and pay more to fight frivolous claims. The legislation, she said, “would put teeth back into” Rule 11.

Cary Silverman, testifying on behalf of the U.S. Chamber of Commerce Institute for Legal Reform, said the bill is needed to provide those who suffer real losses due to a frivolous lawsuit with an opportunity to seek reimbursement of their attorneys’ fees in court.

In a March 23 letter submitted for the hearing record, ABA Governmental Affairs Director Thomas M. Susman wrote that the ABA disagrees with the assertion by supporters that there has been a significant increase in the filing of non-meritorious litigation in the 20 years since the rule was revised to permit the discretionary imposition of sanctions.

“Our objective in opposing the enactment of H.R. 758 is not to stifle discourse over the underlying issues,” he explained. “While we do not believe that Rule 11 requires amendment, we respect that some members of Congress are deeply concerned that frivolous lawsuits are adversely affecting the administration of justice and believe that their concerns and proposed solutions deserve a full and robust examination. The best way to accomplish this is to defer to the Rules of Enabling Act process established by Congress,” Susman concluded.

Rule 11 amendments

continued from page 3

You can follow us at @ABAGrassroots for updates on GAO activities and the scoop on what is happening inside the Beltway.
ABA Criminal Justice Section Chair James E. Felman urged the U.S. Sentencing Commission during a March 12 hearing to improve on the proposed amendments to its sentencing guidelines for economic crimes.

As “the result of endless upward ratcheting,” Felman said, guidelines for high-loss economic crimes point to long or life sentences without parole, regardless of the defendant’s past criminal history.

Felman, who is also the ABA’s liaison to the commission, noted the disparity in sentencing among judges, as some opt to impose lower sentences while others follow the guidelines more strictly. “To some, this looks like the disparity the guidelines were created to avoid - a regime in which the punishment turns as much on the philosophy of the sentencing judge as it does on the facts of the offense,” he explained.

In 2011 the ABA adopted a resolution calling for a review of the commission’s guidelines and urging less reliance on loss as the primary factor in sentencing decisions. The policy highlights the findings from both the ABA and the commission showing that loss “may substantially overstate the seriousness of the offense,” Felman said.

Felman said the ABA is pleased that the commission decided to review the guidelines and agrees with the commission that the guidelines need to be fixed. He stressed, however, that the proposed amendments are not sufficient to address the current problems and that they still over-emphasize the use of loss as a sentencing factor.

Felman urged more emphasis on mens rea and motive, the monetary gain of the defendant, and “other circumstances that better reflect the culpability of the offender and the severity of the offense.” He also said the guidelines should provide for the possibility of a non-prison sentence for first offenders.

The ABA policy adopted in 2011 also urges consideration of the defendant’s actual or intended gain in sentencing.

“There is a difference in culpability between an employee who goes along with a fraud simply to keep his job...and an employee who conceives and executes a fraud with the purpose of putting the proceeds of it into his pocket,” Felman explained.

The association also suggests simplification of the guidelines to reduce upward adjustments to sentencing. Under the current guidelines, a fraud that resulted in $100 loss to each of 300 victims could potentially result in a sentence that is double that of a fraud that caused a $30,000 loss to one person.

Felman noted the work of the Criminal Justice Section Task Force on the Reform of Federal Sentencing for Economic Crimes, which consisted of professors, judges, practitioners, organizational representatives, and observers from the Department of Justice and the Federal Defenders.

The task force presented a draft of its findings to the commission in Fall 2013. The final report, issued in November 2014, includes the following recommendations:

• diminished weight placed on loss;
• elimination of loss as a factor that is “intended” rather than actual; and
• introduction of “culpability” as a measure of severity, which would allow consideration, among other things, of the defendant’s motive, gain and organization.

During the hearing, the commission also heard testimony from judges, federal public defenders, and representatives from advisory and advocacy groups.

The commission is scheduled to submit its proposed amendments to the guidelines to Congress in May.
ABA urges reallocation of payroll tax revenues to preserve retirement and disability trust funds

The ABA urged the Senate Finance Committee leadership Feb. 19 to reject recent House action and support the ability of the government to reallocate payroll tax revenues between the Social Security Old-Age and Survivors Insurance Trust fund (OASI) and the Disability Insurance Trust fund (DI) as needed to prevent depletion of either of the trust fund reserves.

The Social Security Trust Fund comprises the OASI and the DI trust funds, which are funded through the Social Security tax and employer match as a primary source of income for the vast majority of retired Americans and an essential source income for persons unable to work due to severe disabilities.

Over the years, Congress has passed legislation 11 times as the need arose for reallocating revenue for both trust funds and has never allowed a reduction in benefits to occur. The Social Security trustees have notified Congress that the payroll taxes allocated to the DI trust fund will be inadequate to pay full disability benefits starting as early as 2016, which would result in a cut in DI benefits to less than 80 percent of current levels if Congress fails to act.

The president’s fiscal year 2016 budget proposes reallocation of existing payroll tax collection while a longer term solution to overall Social Security solvency is developed with Congress. The proposed reallocation, according to the president’s budget, will have no effect on the overall health of the OASI and DI trust funds on a combined basis and is critical to ensuring that workers who have paid into the Social Security system and become disabled get the benefits they need.

The House, however, in approving its rules Jan. 6 for the 114th Congress, included a rule that would effectively limit options to reallocate funds by setting conditions that would require either new revenues or benefit cuts for beneficiaries.

The ABA, which strongly opposes the recently passed House rule, urged Senate Finance Chairman Orrin G. Hatch (R-Utah) and Ranking Member Ron Wyden (D-Ore.) to work to develop a plan for making sure that both trust funds continue to be adequately financed.

ABA urges reallocation of payroll tax revenues to preserve retirement and disability trust funds

Judicial Vacancies/Confirmations—114th Congress* (as of 3/23/15)

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*Includes territorial judgeships

Save the Date!
ABA Day in Washington
April 14-16, 2015
FLORIDA DEATH PENALTY: ABA President William C. Hubbard conveyed the ABA’s support this month for death penalty legislation pending in the Florida Senate and House of Representatives that would bring Florida’s death penalty laws into compliance with several ABA standards and policy. The legislation, S 664 and H 139, would require a Florida jury’s advisory sentence of death to be based on a unanimous vote supporting death and require the trial court to instruct the jury that each aggravating circumstance used to support the jury’s recommendation of death must be proven beyond a reasonable doubt as found by a unanimous vote. In a March 9 letter to the chairs of the Florida Senate and House Committees on Criminal Justice and their criminal justice subcommittees, Hubbard emphasized that while the ABA takes no position on capital punishment generally, the association has extensively studied the operation of the death penalty in the U.S. criminal justice system and taken the position that governments should take great care to ensure that death penalty cases are administered fairly and impartially, in accordance with due process, and minimize the risk that innocent people may be executed. He pointed that the association’s position on jury verdict unanimity is reflected in the ABA sets of standards relating to trial courts, criminal justice standards, and jury principles. In addition, he said the legislation is in line with the association’s most recent policy adopted in February that is designed to complement the ABA’s other extensive policies and principles reflecting its longstanding and strong support of jury verdict unanimity in all cases, not just in death penalty trials. Hubbard also noted that an ABA assessment team − made up of law and psychology professors, former judges, prosecutors and defense lawyers − completed a study of Florida’s capital punishment system in 2006 and recommended changing the state’s law allowing for non-unanimous jury recommendations that death be imposed.

SOLITARY CONFINEMENT: The Board of Correction for New York City approved a plan in January to amend the Minimum Standards relating to facilities operated by the city’s Department of Correction. The plan eliminates the use of solitary confinement immediately for 16- to 17-year-old prisoners and those with serious mental or physical disabilities or conditions, and beginning in January 2016 for those who are 18 to 21 years old. The approved plan also would create “Enhanced Supervision Housing” (ESH) in New York City jails for the most violent inmates. Commenting on the proposed rules in December 2014, the ABA applauded the efforts of the board and the Department of Correction to develop rules aimed at promoting rehabilitation and humane conditions in New York City jails and providing safe and humane institutional responses to the violence among some inmates at Rikers Island, the city’s main jail complex. The association expressed concerns, however, about broad language for ESH entry and exit. The final rules, which were adopted by a unanimous 7-0 vote, address some of the ABA’s concerns, including requiring, as a basis for ESH placement, specific findings of an inmate’s participation in dangerous gang-related activity, repeated assaults, or serious or persistent violence. In the comments, ABA Governmental Affairs Director Thomas M. Susman highlighted the ABA Standards for Criminal Justice on the Treatment of Prisoners, which contain specific guidance on the use of prolonged isolation and apply to all prisoners in adult correctional facilities, including jails. The standards regarding segregation and solitary confinement, he said, center around a core ideal: “Segregated housing should be for the briefest term and under the least restrictive conditions practicable and consistent with the rationale for placement and with the progress achieved by the prisoner.”

MAGNA CARTA: Magna Carta is celebrating its 800th anniversary this year, and the ABA Division for Public Education has launched a new website with the support of the Magna Carta Trust. The website, Magna Carta: Icon of Liberty, tells the story of the significance of Magna Carta through images and multimedia components. Features include nearly 100 sortable images related to Magna Carta, an interactive timeline chronicling 800 years of Magna Carta history, and a listing of Magna Carta-related resources. The website utilizes images drawn from documents, murals, architecture, monuments, historical sites, and pop culture. The story of Magna Carta began in 1215, when the charter was signed by King John to make peace with the English barons, and the document is connected to fundamental legal principles, including due process, speedy trials and trial by jury. A commemoration of the document is the theme of this year’s Law Day, a national day set aside each year on May 1 to celebrate the rule of law. Chief Justice John G. Roberts Jr. launched the ABA’s year-long Magna Carta anniversary celebration with a speech to the House of Delegates last August at the Annual Meeting in Boston. The association will culminate its celebration July 11 and 12 at historic sites in London and Runnymede, where the newly refurbished ABA Magna Carta Memorial, established in 1957, will be rededicated. For more information, visit www.ambar.org/magnacarta or www.lawday.org.
...we are at a crossroads.

As a society, we can choose to live our everyday lives, raising our families and going to work, hoping that someone, somewhere, will do something to ease the tension—to smooth over the conflict. We can roll up our car windows, turn up the radio and drive around these problems, or we can choose to have an open and honest discussion about what our relationship is today—what it should be, what it could be, and what it needs to be—if we took more time to better understand one another.

Unfortunately, in places like Ferguson and New York City, and in some communities across this nation, there is a disconnect between police agencies and many citizens—predominantly in communities of color....

Serious debates are taking place about how law enforcement personnel relate to the communities they serve, about the appropriate use of force, and about real and perceived biases, both within and outside of law enforcement. These are important debates. ...Those conversations—as bumpy and uncomfortable as they can be—help us understand different perspectives, and better serve our communities....

I worry that this incredibly important and incredibly difficult conversation about race and policing has become focused entirely on the nature and character of law enforcement officers, when it should also be about something much harder to discuss. ...Let me share some of my own hard truths:

First, all of us in law enforcement must be honest enough to acknowledge that much of our history is not pretty. At many points in American history, law enforcement enforced the status quo, a status quo that was often brutally unfair to disfavored groups....

There is a reason that I require all new agents and analysts to study the FBI’s interaction with Dr. Martin Luther King, Jr., and to visit his memorial in Washington as part of their training. And there is a reason I keep on my desk a copy of Attorney General Robert Kennedy’s approval of J. Edgar Hoover’s request to wiretap Dr. King. ...The reason I do those things is to ensure that we remember our mistakes and that we learn from them....

A second hard truth: Much research points to the widespread existence of unconscious bias. Many people in our white-majority culture have unconscious racial biases and react differently to a white face than a black face. In fact, we all, white and black, carry various biases around with us. ...

Although the research may be unsettling, it is what we do next that matters most.

But racial bias isn’t epidemic in law enforcement any more than it is epidemic in academia or the arts. In fact, I believe law enforcement overwhelmingly attracts people who want to do good for a living—people who risk their lives because they want to help other people....

But that leads me to my third hard truth: something happens to people in law enforcement. Many of us develop different flavors of cynicism that we work hard to resist because they can be lazy mental shortcuts. For example, criminal suspects routinely lie about their guilt, and nearly everybody we charge is guilty. That makes it easy for some folks in law enforcement to assume that everybody is lying and that no suspect, regardless of their race, could be innocent. Easy, but wrong.

...After years of police work, officers often can’t help but be influenced by the cynicism they feel.

A mental shortcut becomes almost irresistible and maybe even rational by some lights. The two young black men on one side of the street look like so many others the officer has locked up. Two white men on the other side of the street—even in the same clothes—do not. The officer does not make the same association about the two white guys, whether that officer is white or black. And that drives different behavior. ...We need to come to grips with the fact that this behavior complicates the relationship between police and the communities they serve.

So why has that officer—like his colleagues—locked so many young men of color? Why does he have that life-shaping experience? Is it because he is a racist? Why are so many black men in jail? Is it because cops, prosecutors, judges, and juries are racist? ...

The answer is a fourth hard truth: I don’t think so. ...But the truth is significantly harder than that....

So many young men of color become part of that officer’s life experience because so many minority families and communities are struggling, so many boys and young men grow up in environments lacking role models, adequate education, and decent employment— they lack all sorts of opportunities that most of us take for granted. A majority of American life—one that most citizens are able to drive around because it doesn’t touch them—is that young people in “those neighborhoods” too often inherit a legacy of crime and prison. And with that inheritance, they become part of a police officer’s life, and shape the way that officer—whether white or black—sees the world.

Changing that legacy is a challenge so enormous and so complicated that it is, unfortunately, easier to talk only about the cops. And that’s not fair.

...I’m not looking to let law enforcement off the hook. Those of us in law enforcement must redouble our efforts to resist bias and prejudice. We must better understand the people we serve and protect—to try knowing, deep in our gut, what it feels like to be a law-abiding young black man walking on the street and encountering law enforcement. We must understand how that young man may see us. We must resist the lazy shortcuts of cynicism and approach him with respect and decency.

We must work—in the words of New York City Police Commissioner Bill Bratton—to really see each other. ...But the “seeing” needs to flow in both directions. Citizens also need to really see the men and women of law enforcement....

If they take the time to do that, what they will see are officers who are human, who are overwhelmingly doing the right thing for the right reasons, and who are too often operating in communities—and facing challenges—most of us choose to drive around.

...The first step to understanding what is really going on in our communities and in our country is to gather more and better data related to those we arrest, those we confront for breaking the law and jeopardizing public safety, and those who confront us....

Without complete and accurate data, we are left with “ideological thunderbolts.” And that helps spark unrest and distrust and does not help us get better. ...We must speak the truth about our shortcomings as law enforcement, and fight to be better. But as a country, we must also speak the truth to ourselves. ...

We simply must speak to each other honestly about all these hard truths....

We all have work to do—hard work, challenging work—and it will take time. We all need to talk and we all need to listen, not just about easy things, but about hard things, too. Relationships are hard. Relationships require work. So let’s begin that work. It is time to start seeing one another for who and what we really are. Peace, security, and understanding are worth the effort.

Thank you for listening to me today.
Colorado bill would have interfered with witness interviews

After the ABA expressed concerns this month that a bill pending in the Colorado House Judiciary Committee would have interfered with the duty of defense teams to seek to interview witnesses, the committee approved an amended bill March 17 that is in line with ABA policy and standards.

The bill, House Bill 15-1218, addresses Defense-Initiated Victim Outreach (DIVO), which provides a process by which defense teams can meet with victim survivors and family members who also may be potential witnesses. DIVO serves important needs of the survivors by providing a bridge with the defense team that allows the team to address survivors’ questions about the crime, the defendant and even general concerns about the court process. The original bill would have required, among other things, written authorization prior to contact with witnesses. That requirement was removed from the bill before it was approved by a 13-0 committee vote.

“While every witness has the right to refuse to speak with an attorney, prosecutors and defense attorneys both must be allowed to meet their duties to investigate, including attempting to interview witnesses,” ABA Governmental Affairs Director Thomas M. Susman wrote in a March 16 letter to Colorado House Judiciary Committee Chair Daniel Kagan and Vice Chair Pete Lee.

Susman explained the defense team’s duty to seek to interview all potential witnesses, including victims and their families, is well established in the ABA Criminal Justice Standards for the Defense Function. The duty to seek to interview is intensified in death penalty cases, where the right rests on both the Sixth and Eighth Amendments.

He explained that the ABA Guidelines for the Appointment and Performance of Defense Counsel in Death Penalty Cases explain the unique nature of death penalty proceedings and explain that “counsel should know and fully explain to the client...concessions that the client might offer, such as...an agreement with the victim’s family, which may include matters such as: a meeting between the victim’s family and the client, a promise not to publicize or profit from the offense, the issuance or delivery of a public statement of remorse by the client, or restitution.”

“Defense counsel’s duty to seek to interview is so fundamental to American criminal justice that the ABA Prosecution Function Standards bars prosecutors from hampering communication between defense counsel and witnesses.” Susman explained.

He also pointed out that the legislature in Colorado expressly requires attorney to adhere to ABA standards.

Gun Violence

continued from front page

The report emphasized that the courts have held that the Second Amendment is consistent with a wide variety of laws to reduce gun-related deaths and injuries, and the association seeks to educate its members, as well as the public at large, about the meaning the Second Amendment.

According to Hubbard, a significant part of the ABA’s role in developing the call to action with the public health organizations was to “help make it clear that there are several ways to reduce gun violence that are constitutional and are safely within the law.”