The Juvenile Justice and Delinquency Prevention Act (JJDPA) has not been reauthorized since 2002, and Senate Judiciary Committee Charles E. Grassley (R-Iowa) and Sen. Sheldon Whitehouse (D-R.I.) are looking to change that with the introduction April 30 of S. 1169, a bill to extend the act through 2020.

First enacted in 1974, JJDPA provides crucial support for state programs that help communities take a comprehensive approach to juvenile crime prevention and address the needs of vulnerable youth and their families early and effectively. The JJDPA supports delinquency prevention programs to improve state and local juvenile justice systems; a juvenile planning and advisory system in all states; and operation of the Justice Department’s Office of Juvenile Justice and Delinquency Prevention (OJJDP) dedicated to training, technical assistance, model program development, research and evaluation, and support of state and local efforts.

The ABA has made JJDPA reauthorization a priority for this Congress and focused on the issue in April during ABA Day, the association’s annual lobbying event on Capitol Hill.

In addition to reauthorizing the legislation, S. 1169 includes provisions supported by the ABA to phase out “status” offenses – such as skipping school or underage tobacco use – for which juveniles are jailed, and to require states to implement steps to reduce racial and ethnic disparities among youth in the criminal justice system. S. 1169 also includes new provisions to: increase the focus on youth with mental illnesses or substance abuse disorders; support training for juvenile judges; and enhance oversight of JJDPA grant funding.

In an April 30 statement, Whitehouse said the bill would not only protect children in custody, but also give them a chance to improve their lives. “Every child has a future,” Whitehouse explained, “and we are all best served when kids in the juvenile justice system have appropriate opportunities to get back on track, rather than being marginalized and falling further behind.”

One concern expressed prior to the bill’s introduction was accountability and oversight of JJDPA grants – a topic examined at an April 21 Senate Judiciary Committee hearing. Grassley, presiding over the hearing, explained that there are some who believe that the Justice Department and OJJDP do not enforce the requirements of JJDPA consistently with the states. S. 1169, according to Grassley, would improve transparency and accountability of JJDPA grant funding by creating “measures to tackle fraud and waste so that our youth can benefit from the programs’ full potential.”

“We must remember that the true victims in all of this are the children and youth who face inadequate juvenile justice systems,” Grassley explained.
### LEGISLATIVE BOXSCORE

<table>
<thead>
<tr>
<th>LEGISLATIVE ISSUE</th>
<th>HOUSE</th>
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<th>ABA POSITION</th>
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<td><strong>Criminal Justice.</strong> S. 1169 would reauthorize the Juvenile Justice and Delinquency Prevention Act (JJDPA). 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 subcommittee held a hearing on civil asset forfeiture on 2/11/15.</td>
<td>Judiciary Committee held a hearing on accountability of juvenile justice grants on 4/21/15. Judiciary Committee held a hearing on civil asset forfeiture on 4/15/15.</td>
<td>Supports JJDPA reauthorization. Supports funding for federal and state indigent defense programs. Supports federal sentencing reform to address explosive growth in prison population and costs. Supports certain civil asset forfeiture reforms. See front page.</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>Appropriations subcommittee held a hearing on judicial funding on 3/25/15.</td>
<td>Appropriations subcommittee held a hearing on judicial funding on 3/24/15.</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 6.</td>
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<tr>
<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>Appropriations subcommittee held a hearing on 4/14/15 and approved a draft bill on 5/14/15. Appropriations Committee approved $300 million for LSC on 5/20/15.</td>
<td>Appropriations subcommittee held a hearing on 3/27/15.</td>
<td>President signed P.L. 113-235 (H.R. 83) on 12/16/14.</td>
<td>Supports an independent, well-funded LSC. See page 7.</td>
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Law Day 2015 focuses on Magna Carta

“Magna Carta: Symbol of Freedom Under Law,” was the theme of this year’s Law Day, the annual May 1 event initiated by the ABA to celebrate the rule of law.

Law Day, originally envisioned in 1957 by then ABA President Charles S. Rhyne and officially established the next year by President Eisenhower, has grown from one day to weeks of events conducted by bar associations, courts, schools and other organizations throughout the county.

In this year’s Law Day proclamation, President Obama emphasized the importance of Magna Carta, which he said “first spelled out the rights and liberties of man” when it was sealed in 1215 by King John of England in response to a barons’ rebellion. “The ideals of the Magna Carta inspired America’s forefathers to define and protect many of the rights expressed in our founding documents, which we continue to cherish today,” he said, adding that Magna Carta also provides a framework for constitutional democracies throughout the world.

U.S. Supreme Court Justice Stephen G. Breyer was the featured speaker April 30 at the 15th annual Leon Jaworski Public Program, a major Law Day event in Washington, D.C. The program also featured a panel of experts discussing what makes Magna Carta “mythic.”

Panelists were Akhil Reed Amar, Sterling professor of law and political science, Yale University; H. Robert Baker, associate professor of history, Georgia State University; Daniel Magraw, professorial lecturer, Johns Hopkins University School of Advanced International Studies; and Joyce Lee Malcom, Patrick Henry professor of constitutional law and the Second Amendment, George Mason University School of Law.
Senate Judiciary Committee tackles denial of counsel in misdemeanor cases

The ABA commended the Senate Judiciary Committee for convening a hearing May 13 on the Sixth Amendment right to counsel in misdemeanor cases, agreeing with Senate Judiciary Committee Chairman Charles E. Grassley (R-Iowa) and Ranking Member Patrick J. Leahy (D-Vt.) that the denial of right to counsel in misdemeanor cases is a widespread problem.

Grassley and Leahy acknowledged in their opening statements that many states are not providing the counsel the Constitution requires and that state systems need to be reformed.

In a letter submitted for the hearing, which was the first congressional hearing ever held on the issue, ABA Governmental Affairs Director Thomas M. Susman emphasized that the U.S. Supreme Court’s landmark opinion in Gideon v. Wainwright, 372 U.S. 335 (1963), held that “lawyers in criminal cases are necessities, not luxuries.” He explained that millions of Americans, however, face misdemeanor charges each year without counsel.

Susman said that misdemeanors rarely garner media attention even though they account for 70 percent to 80 percent of all criminal cases. Nevertheless, direct consequences of misdemeanor conviction — including imprisonment, probation, fines and fees — can be substantial, and collateral consequences of these convictions — denial of employment, denial of professional licenses, student loan ineligibility or loss of housing — can be devastating.

Even when counsel is appointed, many defendants are still denied their right to “effective assistance” because public defense attorneys assigned to misdemeanor courtrooms often are expected to represent far too many clients to deliver the level of representation recommended by the ABA Standards for Criminal Justice or the ABA Ten Principles of a Public Defense Delivery System.

“Assembly-line justice in misdemeanor cases falls short not only of our nation’s ideals, but of its constitutional guarantees,” Susman said.

In testimony during the hearing, Hon. Mark S. Cady, of the Conference of Chief Justices, described the mechanism used to deliver indigent defense as a “patchwork” of programs and said that systems in every state are underfunded. He testified that states should have both the financial resources and technical assistance available for an oversight group to monitor their indigent defense systems to make sure they are providing constitutionally effective representation in accordance with the ABA’s Ten Principles.

Cady said the public also would greatly benefit by the establishment of a National Center for the Right to Counsel that could help identify the best practices currently employed nationally that may help bring some uniformity to the indigent defense systems.

Grassley suggested that one way to address the problem would be to reclassify some misdemeanors as civil offenses or eliminate prison sentences for various misdemeanors. Leahy highlighted another possibility — legislation to provide technical assistance to state and local governments so they can meet their Sixth Amendment obligations and to authorize the U.S. attorney general to seek relief through civil action if systemic failure continues.

“While it is easy to talk about lofty, constitutional principles the reality is that it will be hard work to implement the kind of change we are talking about today,” Leahy concluded.

Juvenile Justice

continued from front page

JJDPA reauthorization legislation has not yet been introduced in the House, but the House Appropriations Committee approved fiscal year 2016 appropriations legislation for Commerce, Justice, Science and Related Agencies this month that would eliminate appropriations for the primary JJDPA grant program, which is currently funded at $55 million.

Grassley expressed his disappointment with the House committee’s appropriations bill in a press release on May 14. “My colleagues in the House should recognize the need to adequately equip our communities with tools to respond to youth who have brushes with the law,” he said. “These are kids who need help, and it’s unreasonable to leave these programs out of the picture altogether.”

Whitehouse emphasized that S. 1169 “could put a real dent in the school-to-prison pipeline and send an important message to kids, particularly those in poor or minority communities disproportionately affected by the system, that we care about them and want them to succeed.” The proposed funding “sends the exact opposite message at possibly the worst time in recent history,” he said.

Both senators pledged efforts to assure that final appropriations include adequate funding for JJDPA.
The House Judiciary Committee approved ABA-opposed legislation May 14 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.

H.R. 758, approved by a vote of 19-13, would circumvent the Rules Enabling Act to eliminate provisions adopted in 1993 authorizing, but not requiring, the imposition of sanctions and 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.

Sponsors of the bill maintain that the legislation will reduce frivolous lawsuits by restoring accountability to the legal system.

In a letter to the committee, ABA Governmental Affairs Director Thomas M. Susman wrote that the ABA opposes enactment of H.R. 758 for three main reasons: the legislation would circumvent the Rules Enabling Act that Congress established for amending the Federal Rules of Civil Procedure; there is no demonstrated evidence that the existing Rule 11 is inadequate and needs to amended; and, by ignoring the lessons learned from 10 years of experience under the 1983 mandatory version of Rule 11, Congress incurs the substantial risk that the proposed changes would encourage additional litigation and increased court costs and delays.

He 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.

International Human Rights Lobby Day

The third annual Human Rights Lobby Day, coordinated by the ABA Section of International Law’s International Human Rights Committee and the Governmental Affairs Office, brought members to Capitol Hill April 28 to urge Congress to act on several international issues of concern to the ABA.

Following a morning briefing by ABA Governmental Affairs Director Thomas M. Susman and Senior Legislative Counsel Kristi Gaines, participants headed to Capitol Hill for their individual lobbying meetings, where they urged their members of Congress to advance the following: the bipartisan International Violence Against Women Act, the administration’s funding proposals for the international affairs budget, and Senate advise and consent to ratification of the Convention on the Rights of Persons with Disabilities and the Convention on the Elimination of All Forms of Discrimination Against Women.

Among those participating were (from left): Lance Mabry; Tammie Smith Long; Gregory MacKenzie; Will Pons; Fatima Ahmad; and Helen Droddy.
Supreme Court upholds Florida ban on personal solicitation of campaign funds by state judicial candidates

The U.S. Supreme Court’s 5-4 decision April 29 upholding a Florida state ethical rule banning state judicial candidates from personally soliciting campaign funds “underscores the importance of an independent judiciary to the rule of law,” ABA President William C. Hubbard said in a statement following the ruling.

Hubbard explained that in William-Yulee v. Florida Bar, 575 U.S. ___ (2015), the Supreme Court agreed that Florida’s ethics provision is narrowly tailored to promote the state’s compelling interest in a fair and impartial judiciary free from corruption and the appearance of corruption. “The Supreme Court’s decision reaffirms the states’ vital interest in safeguarding the fairness and integrity of our nation’s elected judges,” Hubbard said.

Florida is one of 39 states where voters elect judges at the polls and one of 30 states that have adopted a version of the ABA Model Code of Judicial Conduct. Canon 7C(1) of the Florida Supreme Court’s Code of Judicial Conduct, based on Canon 4.1 of the ABA Model Code, provides that while judicial candidates “shall not personally solicit campaign funds,” they may establish committees of responsible persons to raise money for their election campaigns.

The Florida Bar disciplined judicial candidate Lanell Williams-Yulee for mailing and posting online a letter soliciting financial contributions. When Yulee contended that the First Amendment protects a judicial candidate’s right to personally solicit campaign funds, the Florida Supreme Court upheld the disciplinary sanctions. That decision was affirmed by the U.S. Supreme Court.

“Judges are not politicians, even when they come to the bench by way of the ballot,” Chief Justice John G. Roberts Jr. wrote in the U.S. Supreme Court’s decision. “A state may assure its people that judges will apply the law without fear or favor, and without having personally asked anyone for money.”

In an amicus brief submitted in the case, the ABA stated that as the pressure to spend more on judicial campaigns increases and as interest groups become important funding sources, solicitation bans such as Florida’s Canon 7C(1) “protect against a public perception that judicial candidates are personally soliciting funds from contributors who may expect more in return than judicial competence.”

Florida’s personal solicitation ban and similar bans adopted by 29 other states are consistent with the First Amendment in their limitation of only the personal solicitation of campaign funds by judicial candidates, the brief stated, adding that the “choice of these narrowly tailored vehicles to protect their judicial branches by avoiding the appearance of corruption, therefore, should be left to the states to make.”

### Judicial Vacancies/Confirmations—114th Congress* (as of 5/27/15)

<table>
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<tr>
<th>Court</th>
<th>Vacancies</th>
<th>Pending Nominations</th>
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<tr>
<td>US Supreme Court (9 judgeships)</td>
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<tr>
<td>US Courts of Appeals (179 judgeships)</td>
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<tr>
<td>US District Courts (678 judgeships)</td>
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<tr>
<td>Court of International Trade (9 judgeships)</td>
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<tr>
<td>Totals</td>
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*Includes territorial judgeships
INDIAN CHILD WELFARE: Proposed regulations to implement the Indian Child Welfare Act (ICWA) take an important step toward achieving full implementation of the act by aiming at “clarity and constancy in practice,” the ABA said in comments submitted May 19 to the Bureau of Indian Affairs. The ABA, through its Center on Children and the Law, has provided training and assistance for many years to improve compliance with child welfare laws, including ICWA. That work has included examining how ICWA can help reduce unnecessary foster care placement, and the center’s staff and consultants have studied what has and has not worked in implementing the act. The ABA comments highlight several provisions in the proposed regulations that are particularly important, including: improving data collection; requiring the agency and courts to inquire about ICWA applicability in all cases, not just if a child looks Native American; rejecting the Existing Family Exception holding that ICWA would not apply to a family not living as part of an “Indian family”; and requiring immediate efforts to achieve family preservation and permanency. The comments also suggest that the bureau further clarify the definition of “child custody proceeding” and the scope of “emergency removal.” The ABA supports full implementation of ICWA and the training and resources necessary to enforce compliance with the act. In addition the association supports efforts to reduce the disproportionate number of American Indian and Alaska Native children who are removed from their homes.

DOMESTIC VIOLENCE: ABA President William C. Hubbard expressed ABA support this month for legislation pending in the Maine Legislature that would provide critical protection for victims of domestic violence, sexual assault and stalking. Protection under the legislation, LD 861, includes “prompt access to the criminal and civil justice system” and options such as “no-penalty early lease termination, lease bifurcation, eviction defense, lock changes; and...prohibiting retaliation, discrimination or penalties in housing due to perpetrator behavior and status as a victim.” Hubbard, in a May 12 letter transmitting comments for a hearing before the legislature’s Joint Standing Committee on the Judiciary, emphasized the ABA’s support for expanding housing protections for victims of domestic and sexual abuse and stalking. “Without access to viable, long-term housing, survivors must choose between homelessness and returning to violent and abusive situations,” the comments stated. While the recent reauthorization of the federal Violence Against Women Act expanded housing protections for victims in almost all federally subsidized housing, those who do not live in such housing are not protected under the statute. Maine has taken important steps toward ensuring the safety of victims of domestic violence, and the legislation would provide for further security for these victims, the comments stated.

LEGAL SERVICES CORPORATION (LSC): The House Appropriations Committee approved a fiscal year 2016 appropriations measure May 20 that would reduce funding for LSC from its current level of $375 million to $300 million. The amount is well below the $452 million requested by President Obama and supported by the ABA, which cited the growing need for civil legal assistance for low-income Americans in statements submitted in March to appropriations panels in the House and Senate. In the statements, ABA President William C. Hubbard emphasized that the LSC is the largest provider of civil legal assistance to low-income Americans through grants to programs in each of the 50 states, the District of Columbia and Puerto Rico and robust funding is needed because other funding sources have diminished due to the country’s economic downturn. When people are unable to resolve their civil legal matters, they are more likely to require other forms of publicly funded assistance, he said. The LSC funding is part of a $51.4 billion Commerce-Justice-Science spending bill that includes an overall reduction of $334 million for various Justice Department grant programs, including elimination of funding for juvenile justice intervention programs. The bill would provide a $44 million increase to $474 million for violence against women programs, create a new $50 million Community Trust Initiative to support training and research; and increase Federal Bureau of Investigation funding by $111 million for fighting cybercrime and terrorism. The Executive Office of Immigration Review would receive the funding requested by the president to support an additional 55 immigration judges and staff to reduce immigration backlogs.
ABA concerned about proposal for implementing legal services provisions of Korea-US FTA

The ABA expressed concerns this month about a proposed draft amendment to the Foreign Legal Consultant Act issued by the Korean Ministry of Justice that is far more restrictive than what is required under the Korea-US Free Trade Agreement (Korea-US FTA).

The draft amendment, which would be part of legislation necessary to implement the third stage of the legal services provisions of the Korea-US FTA, defines a “joint venture” to include only a separately capitalized de novo judicial partner with a foreign law firm partner and a Korean law firm partner as equity holders.

Other restrictive measures would: require a majority number of Korea-qualified partners; restrict the amount of distribution that may be made to non-Korea-qualified partners of the joint venture; and require the Korean law firm partners in the joint venture to have been in existence for a certain number of years and have a minimum number of Korea-qualified partners.

In a May 7 letter to the Korean Ministry of Justice, ABA President William C. Hubbard maintained that the draft amendment will prevent U.S. law firms from offering integrated service in demand by Korean and U.S. clients alike, which was the expectation of U.S. law firms that have entered the Korean market and made substantial investments to establish their operations.

The ABA, he said, would support a model that would allow a U.S. law firm to maintain its current representative office structure and hire Korean partners and associates or to combine and integrate fully with a Korean law firm.

“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, he said, is to defer to the Rules Enabling Act process, which will assure a comprehensive and evidence-based development of any remedial proposal.