ABA supports bill to help provide legal services to homeless veterans

ABA President Linda A. Klein, highlighting the plight of homeless veterans, encouraged the House this month to pass H.R. 6046, bipartisan legislation that would authorize the secretary of Veterans Affairs (VA) to enter into partnerships with public and private entities to provide legal services to homeless veterans and veterans at risk of homelessness.

“Homeless veterans face barriers to housing, employment and services that the federal government cannot remove, but a lawyer can,” Klein said in a Sept. 19 statement. “Allowing increased private-public partnerships with the VA to improve these veterans’ access to legal help would take a desperately needed step toward ending the scourge of veteran homelessness in America,” she explained.

The legislation, sponsored by Rep. Joyce Beatty (D-Ohio) and cosponsored by Reps. Steve Stivers (R-Ohio) and Pat Tiberi (R-Ohio), provides that the VA secretary, in entering partnerships with public or private entities, must ensure that the partnerships are equitably established across the United States to include rural communities and tribal lands. The bill provides that legal services may be related to:

- housing, including eviction defense, and representation in landlord-tenant and foreclosure cases;
- family law, including courts proceedings for child support, divorce, estate planning and family reconciliation;
- income support, including assistance in obtaining public benefits; and
- criminal defense, including defense in matters symptomatic of homelessness, such as outstanding warrants, fines, and driver’s license revocations, in an effort to reduce obstacles in employment or housing that result in recidivism.

The legislation calls for consultation by the secretary with veterans service organizations and other appropriate organizations to coordinate appropriate outreach relationships, and the secretary may require those entering into partnerships to submit periodic reports on the legal services they have provided.

An initiative announced in 2009 by President Obama and the VA has reduced the overall number of homeless veterans, with VA statistics showing that nearly 230,000 veterans and their family members have been permanently housed since 2010. Recent statistics from the annual survey of the Community Homeless Assessment, Local Education and Networking Groups (CHALENG) reveal, however, that while the number of veterans experiencing homelessness on a given night has been reduced from 76,329 in 2010 to just over 49,000 last year, the needs of homeless veterans have remained fairly constant.

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Although comprehensive criminal justice reform remains stalled and is not likely to be voted on by either chamber this Congress, bipartisan legislation to reauthorize the Juvenile Justice Delinquency and Prevention Act of 1974 (JJDPA) received unanimous approval Sept. 14 from the House Education and the Workforce Committee and passed the House Sept. 22 by an overwhelmingly 382-29 vote.

The legislation, H.R. 5963, is similar to S. 1169, a bill approved last year by the Senate Judiciary Committee, and includes provisions supported by the ABA that recognize developments in the field of juvenile justice that have occurred since the JJDPA was last reauthorized in 2002. Sponsors of the legislation, Reps. Carlos Curbelo (R-Fla.) and Bobby Scott (D-Va.) expressed hope that juvenile justice legislation could be enacted this year.

Major provisions in the legislation would:

- place greater emphasis on evidence-based programs when grants are awarded;
- account for the unique needs of youth so that the most vulnerable juvenile populations receive the help they need, such as identifying alternatives to detention, screening for human trafficking victims, and appropriately accommodating pregnant individuals;
- phase out the use of the Valid Court Order Exception that currently causes youth to be jailed or securely confined for “status” offenses, such as truancy or running away from home, that would not be crimes if committed by adults;
- expand tribal access to grant funding;
- support efforts among state leaders to help juvenile offenders acquire skills necessary to become productive members of society through education, reentry, family engagement, and community based services; and
- improve accountability and oversight of juvenile justice programs.

“Today we worked across the aisle to pass delinquency prevention legislation that is ‘smart,’ not ‘tough,’ on juvenile crime,” Scott, the ranking member of the House committee, said after the vote. “While we still have a long way to go, I am proud of the steps we, as a nation, are taking to end the school-to-prison pipeline,” he added.

Noting the efforts of Senate Judiciary Committee Chairman Charles E. Grassley (R-Iowa) and Sen. Sheldon Whitehouse (D-R.I.) to move their Senate bill to a floor vote, Scott said he is optimistic that the “strong bipartisan support – for a bill that builds on the knowledge and experience of the past 14 years – spurs further action and makes its way to the president’s desk for a signature.”

The ABA, which has been urging Congress to promptly reauthorize and strengthen JJDPA, selected juvenile justice as a priority issue earlier this year for ABA Day, the association’s annual lobbying event. Those participating in ABA Day emphasized to members of Congress that more than 60,000 young people are held in detention centers awaiting trial or confined by the courts in juvenile facilities in the United States on an average day, and youth of color are significantly over-represented at all stages of the juvenile system.

The association supports legislation focusing on the rehabilitative purposes of the juvenile justice system to reduce reliance on jail and detention, reduce public costs, and protect public safety.

Rep. Carlos Curbelo

Rep. Bobby Scott

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Senate Judiciary Committee approves bill to create federal infrastructure to curb elder abuse

Alarmed by statistics showing that an estimated five million elders are victims of abuse in America each year and that older victims lose an estimated $3 billion per year to financial exploitation, the Senate Judiciary Committee approved bipartisan legislation Sept. 15 to enhance federal efforts to prevent and redress elder abuse.

S. 3270, the Elder Abuse Prevention and Prosecution Act, includes provisions to:

- direct the U.S. attorney general to designate at least one federal prosecutor in each U.S. attorney’s office to serve as an elder justice coordinator for that district;
- require both the Department of Justice (DOJ) and the Federal Trade Commission (FTC) to establish an elder justice coordinator;
- require DOJ to partner with the Department of Health and Human Services to provide training and technical assistance to state and local governments for investigating, preventing, prosecuting and remedying elder abuse;
- ensure collection of important data about cases and victims; and
- support efforts to improve guardianship proceedings and detect and redress abuse by guardians.

In a Sept. 14 letter urging the committee to approve S. 3270, ABA Governmental Affairs Director Thomas M. Susman emphasized that elder abuse—which encompasses physical and sexual abuse, neglect, and financial exploitation—is a problem that is not defined by socio-economic, racial or ethnic status and occurs at alarming rates in every state.

“Updated resources are constantly needed to combat new ways of abusing older persons,” he wrote. “S. 3270, designed to create a federal infrastructure and support for efforts to better understand, prevent, and combat elder abuse, constitutes a sound investment in the health, dignity, and economic future of our nation.”

The ABA has supported the goals of the legislation for decades and worked toward the enactment of the Elder Justice Act in 2010. The ABA also is involved in numerous efforts to prevent elder abuse through the work of its Commission on Law and Aging.

During a Senate Judiciary Committee hearing in June, bill sponsor and committee Chairman Charles E. Grassley (R-Iowa) described an array of schemes and scams targeting seniors: grandparent scams, where individuals present themselves to a senior as a grandchild in distress who immediately needs cash or a credit card number; sweetheart scams, where a romantic relationship is cultivated with a lonely elder to convince the senior to give an individual money; and scams involving sweepstakes and the lottery, government impersonation, and tech support.

John Horn, U.S. attorney for the Northern District of Georgia, provided details of the Justice Department’s efforts toward combating elder abuse, including an Elder Justice Working Group recently created by the Attorney General’s Advisory Committee and the Elder Justice Website (www.usdoj.gov/elderjustice) established in September 2014 that provides resources for identifying, reporting and prosecuting elder abuse and financial exploitation.

Other federal resources were highlighted by Lois Greisman, associate director of the Division of Marketing Practices in the FTC’s Bureau of Consumer Protection, which conducts education and outreach programs and runs the Pass It On website providing information on specific imposter scams.

Congress agreed on a 10-week continuing resolution Sept. 28 that will generally fund the federal government at current levels through Dec. 9, leaving final decisions about fiscal year 2017 appropriations until after the November elections.

The stopgap funding measure, H.R. 5325, cleared the Senate by a 72-25 vote; the House followed by voting 342-85 to pass the legislation. President Obama immediately signed the bill Sept. 29, ensuring that continued funding would be in place on Oct. 1, the beginning of the new fiscal year.

The final compromise version of the bill, in addition to continuing funding for the government, includes $500 million in flood relief for Louisiana and other states affected by recent storms and emergency funding of $1.1 billion to fight the Zika virus. The bill also includes full-year funding for military construction and the Department of Veterans Affairs.

The bill had been stalled earlier by the insistence of Senate Democrats that the legislation include funding for Flint, Michigan, to address the city’s contaminated water system. A compromise was reached to provide funding for Flint in water resources legislation to be considered before the end of the year.
ABA urges specific, limited change to diversity jurisdiction

The ABA urged Congress this month to enact a specific, limited change to federal diversity jurisdiction, which provides federal courts with jurisdiction over civil cases involving citizens of different states where the amount in controversy exceeds $75,000.

In a letter submitted for the record of a Sept. 13 hearing before the House Judiciary Subcommittee on the Constitution and Civil Justice, ABA Governmental Affairs Director Thomas M. Susman expressed concern about the subcommittee’s consideration of proposals to expand diversity jurisdiction, including those that seek to replace the current “complete diversity” position (requiring that all plaintiffs have a different citizenship from all defendants) with a “minimal diversity” position (requiring that only one plaintiff be diverse from one defendant).

He also emphasized that while the ABA has long held that diversity jurisdiction should not be abolished or curtailed in scope, the association also believes that Congress should alter diversity jurisdiction only when there is a compelling demonstration of a need for changes.

Consistent with this principle, Susman urged the subcommittee to eliminate the difference in the way citizenship is determined for corporations, on the one hand, and all unincorporated business associations, on the other hand, for the purpose of satisfying the diversity of citizenship requirement under the law. He explained that the differential treatment is no longer justified and has created needless confusion.

Currently, a corporation is treated as a citizen of two states: the state where it is incorporated and the state where it maintains its principal place of business. By contrast, for all business associations that are not corporations – such as partnerships, limited liability companies and certain trusts – the citizenship of every individual member, shareholder, or other owner of any portion of the entity constitutes the citizenship of the entity and therefore must be examined to determine whether complete diversity exists.

Susman pointed out that the distinction made sense when enacted.
Draft legislation threatens independence of ALJs

The ABA is opposing draft legislation prepared by the Office of Personnel Management (OPM) and Office of Management and Budget (OMB) that would authorize agencies to appoint administrative law judges (ALJs) to term appointments from one to four years to deal with workload surges—an idea that the ABA maintains poses a threat to ALJ decisional independence from agency influence.

“The independent adjudicative function performed by ALJs and the relationship they must maintain with their employing agencies distinguish ALJs from the rest of the federal workforce,” ABA Governmental Affairs Director Thomas M. Susman wrote Sept. 23 to OMB Director Shaun Donovan and OPM Acting Director Beth F. Cobert. “The primary mechanism preserving this unique relationship is a coordinated regulatory framework that protects ALJ decisional independence by limiting the authority of an agency to interfere with the job status of its ALJs,” he said.

The regulations prohibit an agency from rating the performance of its ALJs, granting monetary or honorary awards for superior adjudicative performance, hiring ALJs for a probationary period, and removing ALJs from office absent good cause established by the Merit System Protection Board on the record after an opportunity for a hearing before the board.

The draft legislation would give an agency the option of selecting from a list of applicants on the ALJ register prepared by OPM (following the same procedure used for permanent appointments) or from former ALJs eligible for reinstatement. Those who receive term appointments from the register would remain eligible for consideration under governing regulations for a future permanent appointment.

Susman noted that these provisions create significant opportunities for agencies to selectively appoint former ALJs with a history of ruling in favor of the appointing agency and in effect treat a term-limited appointment as a probationary period, and to seek extension of only those term-limited ALJs who rule in favor of the agency. At its worst, an agency could make this process its de facto method for hiring ALJs, and there is nothing in the proposal that would prevent an agency from requesting early termination of term-limited ALJs perceived as being too independent.

Susman also said the ABA is perplexed over the absence of information about a need for the legislation. There are two existing programs for agencies needing assistance: the ALJ Loan Program allowing interagency assignment of ALJs; and the Senior ALJ Program permitting agencies to bring back retired ALJs for up to one year.

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*Includes territorial judgeships
ABA seeks answers from Education Department about abrupt changes to PSLF eligibility standards

ABA leaders met with Department of Education (ED) officials Sept. 19 to discuss the association’s strong opposition to the department’s recent action rescinding the association’s status as a qualified employer under the federal Public Service Loan Forgiveness (PSLF) Program without warning or explanation.

Under PSLF, established in 2007, individuals who have made 120 payments on eligible federal student loans while employed full-time in qualified public service jobs become eligible to have the balance of their loans forgiven. The first group of public service workers will be eligible for forgiveness in 2017.

During the meeting with Under Secretary Ted Mitchell and his chief of staff, ABA Executive Director Jack L. Rives, President Linda A. Klein, and President-elect Hilarie Bass emphasized the unfair impact the change has had on ABA staff and the staff of many other organizations who have participated in the program in good faith and are now told they are no longer eligible for the program.

In a letter to Mitchell prior to the meeting, Rives said the ABA is seeking the answers to three central questions:

• On what basis does the department believe it was justified to implement a new PSLF employer eligibility test eight years into a 10-year program?
• On what basis does the department believe such a material change to PSLF eligibility could be made without public notice or any due process measures?
• On what legal basis does the department rely in applying this new, secret standard retroactively, despite borrower good faith reliance on department certification approvals?

Rives requested that, until the questions are answered satisfactorily, the Department halt enforcement of the new eligibility test, restore all months of qualifying payments, and rely on public notice and comment for any material future changes.

The ABA expects a response from the department within the next month. ■

ALJs

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“The ABA has worked actively for almost three decades to protect the adjudicative independence of the administrative judiciary and promote increased efficiency and fairness in the system,” Susman said. He explained that while the ABA appreciates OPM’s focus on assuring that agencies have sufficient ALJ’s to handle the workloads at all times, “we can ill-afford to adopt a proposal that could weaken the protections in place to insulate ALJ decision-making from agency control and undermine public trust in the impartiality of the administrative judiciary.” ■
ABA concerned about impact of arms sales on civilians

The ABA commended Sens. Rand Paul (R-Ky.) and Chris Murphy (D-Ct.) this month for their efforts to draw attention to humanitarian issues in Yemen resulting from the armed conflict in that country and the need for increased scrutiny of U.S. exports of military equipment to parties to that conflict.

Paul and Murphy introduced S.J. Res. 39 to block the U.S. sale of tanks, guns, ammunition and other defense materials to the Kingdom of Saudi Arabia in response to reports that Saudi security forces have used U.S.-origin military equipment, including cluster munitions, in operations in Yemen for indiscriminate and disproportionate attacks on civilians. The Senate, however, rejected the joint resolution Sept. 21, when senators voted 71-27 to table a motion to bring the measure to a vote.

“The ABA regards human rights and the rule of law as cornerstones of a free and just society, including in times of armed conflict,” ABA Governmental Affairs Director Thomas M. Susman wrote in a Sept. 14 letter to Murphy and Paul. The association, he said, supports “strict adherence to the law of armed conflict” and has called for investigations into alleged violations of such laws by both the United States and others. He pointed out that UN High Commissioner for Human Rights Zeid Ra’ad Al Hussein has called for an international independent investigation into serious violations of international human rights law and international humanitarian law committed by all sides in the conflict in Yemen.

Susman emphasized that the United States has an obligation to suspend further security assistance until it can be credibly determined that Saudi Arabia – and any other recipients of U.S. defense articles participating in the conflict – are abiding by the law of armed conflict and have fully investigated these allegations.

“The ABA is concerned that ongoing export of equipment that has been used in an inappropriate manner in civilian areas could have a destabilizing influence in the region,” Susman wrote. “If the United States is perceived, even implicitly, to condone or aid and abet indiscriminate attacks on civilians, our nation’s efforts to isolate and marginalize those advocating violent extremism will be undermined,” he concluded.

ABA concerned about impact of arms sales on civilians

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](http://www.americanbar.org/advocacy/governmental_legislative_work/publications.html). ©2016 American Bar Association. All rights reserved. Please address correspondence to:

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