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- * ABA testified or submitted statement or letter to Congress or federal agency during the 114th Congress.
- ◆ ABA legislative and governmental priority during the 114th Congress, including issues encompassed in broad priorities.
- † This chart includes issues on which the ABA House of Delegates or Board of Governors has approved association policy.



Subject	Description and Status	ABA Position
<h2>Administrative Law</h2>		
*Administrative Law Judges – Temporary Appointments	A draft legislative proposal prepared by the Office of Personnel Management and the Office of Management and Budget would have authorized agencies to appoint administrative law judges (ALJs) to term appointments from one to four years to deal with workload surges. There was no action on the proposal.	<i>Opposes.</i>
*Regulatory Reform	S. 1607 would have required independent regulatory agencies to comply, to the extent permitted by law, with regulatory analysis requirements currently applicable to executive agencies when adopting new regulations. Title II of H.R. 712 would have amended and strengthened the Unified Regulatory Agenda to increase transparency in the regulatory process. The Senate Homeland Security and Governmental Affairs Committee approved S. 1607. There was no comparable House legislation. The House passed H.R. 712. There was no comparable Senate legislation.	<i>Supports.</i>
<h2>Alternative Dispute Resolution</h2>		
*Nursing Home Arbitration	The Centers for Medicare & Medicaid Services (CMS) published a final rule on 10/4/16 that includes provisions prohibiting nursing homes from using pre-dispute binding arbitration agreements to settle disputes over residents' care. A judge on the U.S. District Court for the Northern District of Mississippi, however, blocked implementation of the binding arbitration ban, finding that CMS exceeded its legal authority in issuing the rule and that any future ban on nursing home arbitration should be addressed through federal legislation rather than CMS rules. The government has not appealed the decision.	<i>Supports the alternative dispute resolution provisions in the final rule.</i>
<h2>Attorney-Client Privilege</h2>		
◆*CFPB Disclosure of Records and Information Rule	The Consumer Financial Protection Bureau (CFPB) proposed a rule in August 2016 that would allow the CFPB to share the privileged information it receives from supervised or regulated entities with many types of foreign, state, and other agencies that are not covered by the statutory privilege waiver protections established by 12 U.S.C. §§ 1828(x) and 1821(t).	<i>Opposes.</i>



Subject	Description and Status	ABA Position
<h2>Bankruptcy Law</h2>		
Harmonization of Bankruptcy and Asset Forfeiture Laws	<p>S. 3045 and H.R. 5283, civil asset forfeiture reform legislation, would have provided key protections to innocent persons whose property is seized under federal civil asset forfeiture laws. The bills included technical amendments to harmonize certain aspects of the federal forfeiture and bankruptcy laws by requiring the creation of two federal databases to help owners, creditors, lienholders and others with an interest in seized property to better protect their rights in any parallel civil forfeiture bankruptcy proceedings. The House Judiciary Committee approved H.R. 5283, and the bill was discharged by the House Committees on Financial Services, and Energy and Commerce. S. 3045 was referred to the Senate Judiciary Committee, where there was no action on the bill.</p>	<p><i>Supports the overall bill and the provisions harmonizing federal forfeiture and bankruptcy laws.</i></p>
<h2>Business Law</h2>		
*ABA Labor Trafficking and Child Labor Model Principles	<p>The ABA adopted the <i>Model Principles of the ABA Model Business and Supplier Policies on Labor Trafficking and Child Labor</i>, which are designed to provide a practical and flexible tool to help companies and suppliers develop or refine their policies commensurate with the risk and other variables presented in their specific businesses.</p>	<p><i>Encourages chief executive officers and general counsel of all U.S. companies to adopt and implement policies consistent with the ABA Model Principles.</i></p>
<h2>Children/Families</h2>		
*Adoption and Foster Care Reporting System	<p>The Administration on Children and Families (ACF) in the Department of Health and Human Services issued a notice of proposed rulemaking in February 2015 to update the Adoption and Foster Care Analysis and Reporting System (AFCARS), which includes case-level information from state and tribal agencies under Title IV-E of the Social Security Act on all children in foster care and those who have been adopted with Title IV-E agency involvement. The proposed changes, required by the Fostering Connections to Success and Increasing Adoptions Act of 2008 and the Preventing Sex Trafficking and Strengthening Families Act of 2014, include the addition of education-related data information to the system. The ACF also issued a supplemental notice of proposed rulemaking in April 2016 proposing collection and reporting of additional data in AFCARS related to the Indian Child Welfare Act.</p>	<p><i>Supports the addition of education-related data information, but recommends several changes to the proposal dealing with school enrollment, educational level, educational stability, and special education.</i></p>



Subject	Description and Status	ABA Position
*Domestic Violence – Pro bono Assistance	S. 2280 and H.R. 6149 would have required the U.S. attorney in each judicial district across the country to hold public events to promote pro bono legal services for victims of domestic violence. The Senate passed S. 2280. H.R. 6149 was referred to the House Judiciary Committee, where there was no action on the bill.	<i>Supports.</i>
*Family First Prevention Services	S. 3065 and H.R. 5456, the Family First Prevention Services Act, sought to strengthen families by providing evidence-based prevention services to keep children out of foster care and reduce inappropriate group home placements. The bill would have allowed use of federal child welfare funds under Title IV-E of the Social Security Act for preventive services in the child’s home and reauthorized the Court Improvement Program (CIP), which provides funds to state courts to improve judicial processes for foster care and adoption cases. The House passed H.R. 5456. S. 3065 was referred to the Senate Finance Committee, where there was no action on the bill. The provisions of the Family First Prevention Services Act were incorporated into H.R. 34, a major medical research and mental health bill, but were dropped during Senate floor consideration of the legislation, which was signed into law (P.L. 114-255) on 12/13/16.	<i>Supports.</i>
*Education – Homeless and Foster Children	P.L. 114-95 (S. 1177), education reform legislation signed 12/10/15, includes provisions aimed at: ensuring that students can remain in their same school when they enter foster care and change foster care placements, unless it is not in their best interest; enrolling students in foster care immediately in a new school when a school change is necessary without the typically required records; facilitating the prompt transfer of records when a child in foster care enters a new school; requiring school districts and child welfare agencies to have reciprocal points of contact for students in foster care; requiring local education and child welfare agencies to collaborate to develop and implement a plan for transportation when needed to keep students in foster care in their school of origin; and improving the collection of data, particularly high school graduation rates, on the success of children in foster care to keep abreast of their progress. The new law also requires state and local education agencies to ensure that their plans address the needs of homeless children. The Department of Education issued final regulations for the new law in November 2016.	<i>Supports.</i>



Subject	Description and Status	ABA Position
*Indian Child Welfare	The Indian Affairs Bureau issued final regulations in June 2016 implementing the Indian Child Welfare Act (ICWA) that include: 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.	<i>Supports full implementation of ICWA and the training and resources necessary to enforce compliance with the act.</i>
Violence Against Women Act	P.L. 114-113 (H.R. 2029), fiscal year 2016 consolidated appropriations legislation signed 12/18/16, included \$480 million for violence against women prevention and prosecution programs, which included a \$2.5 million increase to \$45 million for legal assistance to victims. P.L. 114-254 (H.R. 2028), fiscal year 2017 continuing appropriations legislation signed 12/10/16, provides funding at fiscal year 2016 levels with a 0.2 percent across-the-board reduction through 4/28/17.	<i>Supports.</i>

Civil Rights/Constitutional Law

Civil Justice Tax Fairness	S. 2059 and H.R. 3550 would have amended the Internal Revenue Code of 1986 to allow the following: an exclusion from gross income for amounts received by a claimant on account of a claim of certain unlawful discrimination; income averaging for backpay and frontpay amounts received from such claims; and an exemption from the alternative minimum tax for any tax benefit resulting from the income averaging of amounts received from an unlawful discrimination claim. S. 2059 was referred to the Senate Finance Committee. H.R. 3550 was referred to the House Ways and Means Committee. There was no action on the bills.	<i>Supports.</i>
Gender Diversity on Corporate Boards	H.R. 4718 would have required the Securities and Exchange Commission to establish a Gender Diversity Advisory Group to study and issue a report with recommendations on strategies to increase gender diversity among the corporate directors of publicly traded companies. H. Res. 445 would have expressed the sense of the House that corporations should commit to utilizing benefits of gender diversity in the boards of directors and other senior management positions. H.R. 4718 was referred to the House Financial Services Committee. H. Res 445 was referred to the House Education and the Workforce Committee. There was no action on the bills. There was no comparable Senate bill.	<i>Urges public companies to diversify their boards to more closely reflect the diversity of society and the workforce in the United States and to adopt plans for achieving diversity.</i>



Subject	Description and Status	ABA Position
◆ International Human Rights Defense Act	S. 302 and H.R. 590 would have integrated the protection of lesbian, gay, bisexual and transgender (LBGT) persons into U.S. foreign policy and directed a coordinated response to address international violence and discrimination against LGBT individuals through a Special Envoy for the Human Rights of LGBT Peoples. S. 302 was referred to the Senate Foreign Relations Committee. H.R. 590 was referred to the House Foreign Affairs Subcommittee on Africa, Global Health, Global Human Rights and International Organizations. There was no action on the bills.	<i>Supports.</i>
* Japanese American Internment	S. Res. 373, H. Res. 118 and H. Res. 626 would have recognized the historical significance of the internment of Japanese Americans during World War II and established a National Day of Remembrance to increase awareness of the event. S. Res. 373 also would have expressed the sense of the Senate that policies that discriminate against an individual based on race, ethnicity, national or religion would be a repetition of past mistakes. S. Res. 373 was referred to the Senate Judiciary Committee. H. Res. 118 and H. Res. 626 were referred to the House Judiciary Subcommittee on the Constitution and Civil Justice. There was no action on the resolutions.	<i>Supports.</i>
◆ Jury ACCESS ACT/ Juror Non-discrimination Act	S. 447 and H.R. 864 would have amended 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. S. 447 was referred to the Senate Judiciary Committee. H.R. 864 was referred to the House Judiciary Subcommittee on the Constitution and Civil Justice. There was no action on the bills.	<i>Supports.</i>
Native Hawaiian Self-Determination	The Department of Homeland Security announced a final rule that sets out an administrative procedure and criteria for the department to use if the Native Hawaiian community seeks to reestablish a formal government-to-government relationship with the United States.	<i>Supports.</i>
◆* Pay Equity	On 9/11/15, the Department of Labor published a final rule, effective on 1/11/16, to implement an April 2014 executive order prohibiting federal contractors from retaliating against employees who ask about or share salary information. On 1/29/16, the president issued a proposal to require federal contractors and private companies with 100 or more employees to report pay data by race, gender and ethnicity on their annual EEO-1 reports to the Equal Employment Opportunity Commission (EEOC). The new requirements, approved by the Office of Management and Budget on 9/29/16, go into effect for information collected in 2017 and submitted to the EEOC in March 2018.	<i>Supports.</i>



Subject	Description and Status	ABA Position
◆Paycheck Fairness Act	<p>S. 862 and H.R. 1619 would have updated and strengthened the Equal Pay Act of 1963 to prohibit an employer from paying unequal wages to male and female workers who perform jobs under similar work conditions that require substantially equal skill, effort and responsibility, unless there is a legitimate reason for the pay differential. The bills also would have prohibited employer retaliation against employees who share salary information. S. 875, a Republican alternative, would have made modest improvements in retaliation protection. S. 862 and S. 875 were referred to the Senate Health, Education, Labor and Pensions Committee. H.R. 1619 was referred to the House Education and the Workforce Subcommittees on Workforce Protections, and Higher Education and Workforce Training. There was no action on the bills.</p>	<i>Supports.</i>
*Restore Honor to Servicemembers Act	<p>S. 1766 and H.R. 3068 would have provided veterans an opportunity to request that their characterization of service be upgraded if they were discharged from the military due solely to their sexual orientation and did not receive an “honorable” characterization of service. The bills also would have ensured that any indications of sexual orientation would be removed from certain records of servicemembers who received “honorable” discharges. S. 1766 was referred to the Senate Armed Services Committee. H.R. 3068 was referred to the House Armed Services Subcommittee on Military Personnel. There was no action on the bills.</p>	<i>Supports.</i>
◆*Same-Sex Marriage	<p>On 6/26/15, the U.S. Supreme Court ruled in <i>Obergefell, et al. v. Hodges, Director, Ohio Department of Health, et al.</i>, 576 U.S. __ (2015), that the Fourteenth Amendment requires a state to license a marriage between two people of the same sex and to recognize a marriage between two people of the same sex when their marriage was lawfully licensed and performed in another state.</p>	<i>Supports.</i>
*Sex Discrimination	<p>The Department of Labor issued a final rule, effective 8/15/16, that prohibits any contractor or subcontractor that does more than \$10,000 of business in one year with the federal government from discriminating in employment decisions on the basis of race, color, religion, sex, sexual orientation, gender identity, or national origin. The new rule includes specific protections against: compensation discrimination; sexually hostile work environments; discrimination based on pregnancy, childbirth or related medical conditions; and discrimination based on unlawful sex stereotypes, gender identity and transgender.</p>	<i>Supports.</i>



Subject	Description and Status	ABA Position
<h2>Courts/Judiciary</h2>		
◆*Class Actions	H.R. 1927 would have circumvented the Rules Enabling Act and amended Rule 23 of the Federal Rules of Civil Procedure, which governs certification as a class, to mandate that plaintiffs show that they suffered the same type and extent of injury as the named class representative. The House passed H.R. 1927. There was no comparable Senate bill.	<i>Opposes the legislation and urges that Congress allow the Judicial Conference of the United States to continue its current review of Rule 23.</i>
◆Diversity Jurisdiction	The House Judiciary Subcommittee on the Constitution and Civil Justice held a hearing to consider 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).	<i>Opposes abolishing or curtailing diversity jurisdiction, but supports the elimination of differential treatment for corporations and unincorporated business associations.</i>
◆*Federal Judicial Funding	P.L. 114-113 (H.R. 2029), consolidated fiscal year 2016 appropriations legislation signed 12/18/15, included an increase of \$80.4 million for the federal judiciary, bringing the total in discretionary funding for the courts to \$6.78 billion. The law also extended temporary judgeships for an additional year in nine district courts. P.L. 114-254 (H.R. 2028), fiscal year 2017 continuing appropriations legislation signed 12/10/16, provides funding at fiscal year 2016 levels with a 0.2 percent across-the-board reduction through 4/28/17.	<i>Supports providing the federal judiciary with sufficient financial resources necessary to carry out its constitutional and statutory duties.</i>
Federal Rules of Civil Procedure	Federal Rules of Civil Procedure amendments, which went into effect on 12/1/15, seek to reduce litigation costs and delays by encouraging early case management by judges, increased cooperation among the parties, and the proportional use of discovery based on the needs of the case. Following procedures required by the Rules Enabling Act, the Judicial Conference of the United States developed and approved the amendments, the Supreme Court approved them, and they went into effect six months after Congress received them and took no action to reject, modify, or defer implementation.	<i>Section of Litigation held educational panels in 13 cities to explain the rules and how to apply them to actual cases.</i>
◆Judicial Compensation	Federal judges received a 1 percent cost-of-living adjustment (COLA) for 2017. District judges now make \$205,100 and circuit judges make \$217,600. Administrative law judges also received a 1 percent COLA in base pay for 2017.	<i>Supports adequate judicial compensation and periodic review of judicial salary levels.</i>



Subject	Description and Status	ABA Position
◆*Judicial Selection/ Vacancies	During the 114th Congress, there were 77 Article III judicial nominations (one Supreme Court, nine circuit court of appeals, 63 district court, and four Court of International Trade), of which 22 were confirmed (two circuit court of appeals, 18 district court, and two Court of International Trade). At the end of the 114th Congress, there were 101 vacancies. Senate Republican leaders announced that they would not consider Supreme Court nominee Merrick Garland, nominated in March 2016 to fill the vacancy left by the death of Justice Antonin Scalia, because it was a presidential election year.	<i>Supports prompt filling of judicial vacancies and urges selection of individuals of racial and ethnic diversity, as well as those with disabilities, at all levels of the federal bench. Urged the Senate to promptly consider the Garland nomination to fulfill its constitutional responsibilities.</i>
◆*Lawsuit Abuse Reduction Act	S. 401 and H.R. 758 would have circumvented the Rules Enabling Act to amend Rule 11 of the Federal Rules of Civil Procedure to require the imposition of monetary sanctions against lawyers for filing non-meritorious claims. The bill would have rolled back critical improvements made to the rule in 1993 that made the imposition of sanctions discretionary and allowed parties and their attorneys to withdraw frivolous claims within 21 days after a motion for sanctions is served. The House passed H.R. 758. S. 401 was referred to the Senate Judiciary Committee, where there was no action on the bill.	<i>Opposes.</i>
*Tribal Justice – American Indian/Alaska Native	The Senate Indian Affairs Committee held an oversight hearing on juvenile justice in Indian country and a hearing in Alaska to examine how tribal courts might provide a viable alternative to the current system, which includes barriers inhibiting the Alaska Native tribes from exercising criminal jurisdiction. The Bureau of Indian Affairs issued a new Model Indian Juvenile Code to assist Indian tribes in creating or revising their juvenile codes. S. 1704 would have amended the Indian Tribal Justice Act to secure urgent resources vital to Indian victims of crimes by creating a dedicated funding stream from the Crime Victims Fund to administer a tribal grant program through the Department of the Interior. The Senate Indian Affairs Committee approved S. 1704. There was no comparable House bill.	<i>Supports steps to help strengthen Alaska Native families and to empower Indian tribes with meaningful decision-making authority over their criminal and juvenile justice systems. Supports S. 1704.</i>
*U.S. Court of Federal Claims Jurisdiction Reform	S. 1353 and H.R. 2329 would have amended 28 U.S.C. § 1500 to allow parties to simultaneously pursue separate legal claims against the federal government involving the same operative facts in both the U.S. Court of Federal Claims and the U.S. district court, but would have required the court presiding over the second-filed action to stay that case until the first action is no longer pending. The House Judiciary Committee approved H.R. 2329. S. 1353 was referred to the Senate Judiciary Committee, where there was no action on the bill.	<i>Supports.</i>



Subject	Description and Status	ABA Position
<h2>Criminal Law</h2>		
◆*Sentencing/Corrections Reform	<p>S. 2123 and H.R. 3713 would have narrowed the scope of mandatory sentences to focus on the most serious drug offenders and violent criminals, expanded the safety valve authority that allows judges discretion in sentencing lower-level violent offenders, and ensured retroactive application of provisions in the Fair Sentencing Act of 2010, which reduced disparity in sentencing between crack and powder cocaine offenses. S. 2123 also included provisions to: expand recidivism-reducing prisons programs leading to early supervised release; expand compassionate release for elderly, terminally ill prisoners; end federal juvenile life sentences without parole; ban juvenile solitary confinement; and permit juveniles to obtain expungement of certain criminal records. H.R. 759 closely paralleled the corrections provisions in S. 2123. The House Judiciary Committee approved H.R. 759. The Senate Judiciary Committee approved S. 2123. The House Judiciary Committee approved H.R. 3713.</p>	<p><i>Supports sentencing reforms in both bills and corrections reforms in S. 2123 and H.R. 759.</i></p>
Civil Asset Forfeiture	<p>S. 3045 and H.R. 5283 would have provided key protections to innocent persons whose property is seized under federal civil asset forfeiture laws. The House Judiciary Committee approved H.R. 5283, and the bill was discharged by the House Committees on Financial Services, and Energy and Commerce. S. 3045 was referred to the Senate Judiciary Committee, where there was no action on the bill. See related entry, Harmonization of Bankruptcy and Asset Forfeiture Laws, under Bankruptcy Law.</p>	<p><i>Supports.</i></p>
◆*Criminal Intent Standards	<p>H.R. 4002 would have established a default <i>mens rea</i> standard of “knowingly” for the element of criminal intent to apply to criminal and regulatory provisions imposing penalties that include imprisonment and to laws that lack such a state-of-mind requirement. S. 2298, the Senate <i>mens rea</i> bill, would have applied the standard of “willingly” to all criminal laws and regulations that lack such a standard. The House Judiciary Committee approved H.R. 4002. The Senate Judiciary Committee held a hearing on <i>mens rea</i> proposals.</p>	<p><i>Supports mens rea provision as long as it applies only on a prospective basis.</i></p>
Gun Violence	<p>No action was taken on numerous bills introduced to address gun violence. On 10/1/15, Senate Democrats released a set of principles intended to prompt consideration of gun legislation focusing on three key points: closing background check loopholes, making background checks better, and shutting down the illegal pipeline of guns.</p>	<p><i>Supports steps to prevent gun violence by strengthening the nation’s gun laws. Joined with health care organizations in a call to action to address gun violence as a public health crisis.</i></p>



Subject	Description and Status	ABA Position
◆*Fair Chance Act	S. 2021 and H.R. 3470 would have required the federal government and federal contractors to postpone requests for criminal history information from job applicants until the applicants receive a conditional offer of a job, giving individuals with criminal records a fair chance at gaining employment. The Senate Homeland Security and Governmental Affairs Committee approved S. 2021. H.R. 3470 was referred to the House Oversight and Government Reform Committee; House Administration Committee; House Education and the Workforce Subcommittee on Workforce Protections; House Armed Services Subcommittee on Readiness; and House Judiciary Subcommittee on Crime, Terrorism, Homeland Security and Investigations. There was no action on H.R. 3470.	<i>Supports.</i>
*Human Trafficking Survivors	S. 3441 and H.R. 6292 would have permitted a victim of human trafficking to move to vacate convictions and expunge arrests for nonviolent crimes committed by the victim as a direct result of the trafficking. S. 3441 was referred to the Senate Judiciary Committee. H.R. 6292 was referred to the House Judiciary Subcommittee on Crime, Terrorism, Homeland Security and Investigations. There was no action on the bills.	<i>Supports.</i>
◆*Indigent Defense	P.L. 114-113 (H.R. 2029), consolidated fiscal year appropriations legislation signed 12/18/16, included \$1 billion for the federal judiciary's Defender Services Program, which allowed the hourly rate for non-death penalty cases to increase from \$127 to \$129. P.L. 114-254 (H.R. 2028), fiscal year 2017 continuing appropriations legislation signed 12/10/16, provides funding at fiscal year 2016 levels with an across-the-board 0.2 percent reduction through 4/28/17. S. 3144 and H.R. 5124 would have authorized a federal class action lawsuit against a state for its systemic failures to guarantee the right to effective assistance of counsel and required a state or local government to consult with public defenders before distributing justice assistance grants to community organizations and local governments. S. 3144 was referred to the Senate Judiciary Committee. H.R. 5124 was referred to the House Judiciary Subcommittees on Crime, Terrorism, Homeland Security, and Investigations, and on the Constitution and Civil Justice. There was no action on the bills. The Senate Judiciary Committee held a hearing on the widespread problem of denial, in misdemeanor cases, of the Sixth Amendment right to counsel. The Judicial Conference of the United States appointed an Ad Hoc Committee to Review the Criminal Justice Act Program, which completed more than 100 hours of public testimony in seven cities and is expected to issue a report with recommendations in April 2017.	<i>Supports sufficient funding for the Defender Services Program and the goals of the legislation. Commended the Senate Judiciary Committee for holding the hearing on right to counsel.</i>



Subject	Description and Status	ABA Position
*Inmate Calling Services	On 12/18/15, the Federal Communications Commission (FCC) published a new rule setting a cap on per-minute charges for all local and long-distance calls made by prisoners from state and federal prisons and providing for tiered caps on rates for calls made from local jails. A federal appeals court stayed implementation of the caps and a related rule limiting fees for certain single-call services, but allowed implementation of caps and restrictions on ancillary fees. S. Con. Res. 58 and H. Con. Res. 180 would have expressed the sense of Congress that rates for inmate calling services should not exceed the affordable modified rates adopted by the FCC. S. Con. Res. 58 was referred to the Senate Commerce, Science and Transportation Committee. H. Con. Res. 180 was referred to the House Energy and Commerce Committee. There was no action on the resolutions.	<i>Supports.</i>
◆Justice and Mental Health Collaboration	S. 993 and H.R. 1854 would have authorized the attorney general to award justice and mental health grants to provide mental health services for people who come in contact with the criminal justice system. Up to 28 percent of the funds would have been authorized for veterans programs, including veterans treatment courts and legal assistance to mentally ill veterans who have been incarcerated. The Senate passed S. 993. The House Judiciary Committee approved H.R. 1854.	<i>Supports.</i>
Justice For All Reauthorization Act	P.L. 114-324 (S. 2577), signed on 12/16/16, amends and strengthens provisions in the Justice for All Act of 2004, the Victims of Crime Act of 1984, the DNA Sexual Assault Justice Act of 2004, the Innocence Protection Act of 2004, and the Prison Rape Elimination Act of 2003. The act's provisions include improving victims' rights, increasing resources for reducing the backlog of forensic testing of rape kits, expanding access to post-conviction DNA testing by narrowing the evidence preservation requirement, and reauthorizing the Capital Case Litigation Initiative, which improves the quality and effectiveness of legal representation in death penalty cases. The law also amended the Prison Rape Elimination Act regarding state compliance.	<i>Supports.</i>
◆*Juvenile Justice	S. 1169 and H.R. 5963 would have reauthorized and strengthened the Juvenile Justice and Delinquency Prevention Act (JJJPA), including provisions to phase out "status offenses," require steps to reduce racial disparities in the juvenile justice system, increase the focus on youth with mental illnesses or substance abuse disorders, support training for juvenile court judges, and enhance oversight of JJJPA grant funding. The Senate Judiciary Committee held a hearing on accountability and oversight of juvenile justice grants and approved S. 1169. The Senate leadership hotlined S. 1169 to bring it up quickly on the Senate floor to pass by unanimous consent, but one senator objected. The House passed H.R. 5963.	<i>Supports.</i>



Subject	Description and Status	ABA Position
*Mandatory Minimum Sentencing	S. 2193 would have increased the current two-year maximum sentence for illegal reentry into the United States to five years, created a new five-year mandatory minimum sentence for illegal reentry into the United States by individuals with prior aggravated felony convictions or at least two prior illegal reentry convictions, and imposed a new illegal reentry penalty of up to 10 years for anyone who had previously been denied admission or deported at least three times. The Senate failed to garner the 60 votes necessary to bring S. 2193 to the floor for consideration. Similar legislation, H.R. 3011, was referred to the House Judiciary Subcommittee on Immigration and Border Security, where there was no action on the bill.	<i>Opposes.</i>
◆*Second Chance Act	P.L. 114-113 (H.R. 2029), consolidated fiscal year 2016 appropriations legislation signed 12/18/16, included \$68 million for offender reentry programs and research authorized under the Second Chance Act, which provides resources to state and local governments and community-based organizations to improve efforts to help those released from prisons and jail to successfully return to their communities. P.L. 114-254 (H.R. 2028), fiscal year 2017 continuing appropriations legislation signed 12/10/16, provides funding at fiscal year 2016 levels with a 0.2 percent across-the-board reduction through 4/28/17. S. 1513 and H.R. 3406 would have reauthorized the act. The Senate bill also included provisions encouraging home detention and early release from prison for older inmates. S. 1513 was referred to the Senate Judiciary Committee, where there was no action on the bill. The House Judiciary Committee approved H.R. 3406.	<i>Supports.</i>
*Sentencing Guidelines—Economic Crimes	The U.S. Sentencing Commission approved amendments to the federal sentencing guideline for economic crimes to improve the way the guideline takes into account harm to victims, individual culpability and the offender's intent. The amendments were transmitted to Congress on 5/1/15 and went into effect on 11/1/15.	<i>Supports the amendments but advocates for additional changes to better address problems with the guideline.</i>
*Sentencing Guideline Priorities	The U.S. Sentencing Commission adopted final priorities for the amendment cycle ending 1/1/16 that include compassionate release, statutory mandatory penalties, overall structure of the guidelines, statutory and guideline definitions relating to the nature of a defendant's prior convictions, child pornography offenses, recidivism, probation and supervised release, and resolution of circuit conflicts. The amendments, submitted to Congress on 4/11/16, went into effect on 11/1/16.	<i>Urged inclusion of priority focusing on expanding commentary regarding reasons that may justify sentence reduction, including compassionate release.</i>



Subject	Description and Status	ABA Position
Solitary Confinement	Responding to a Department of Justice (DOJ) report reviewing the overuse of solitary confinement in American prisons, the president issued a memorandum on 3/1/16 directing DOJ to revise its regulations and policies to limit the use of restrictive housing, including solitary confinement for adults and juveniles, in federal correctional and detention systems throughout the United States.	<i>Recognizes the negative effects of solitary confinement on prisoners and supports limiting its use, particularly for juveniles.</i>
Disability Law		
Marrakesh Treaty to Facilitate Access to Published Works	On 2/10/16, the Senate received from the president Treaty Document 114-6, the Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired, or Otherwise Print Disabled. This international copyright treaty, administered by the World Intellectual Property Organization, requires parties to create a set of mandatory limitations and exceptions to copyright rules in order to make published works available in formats accessible to those with a range of disabilities that interfere with the effective reading of printed material. The treaty was referred to the Senate Foreign Relations Committee, where there was no action.	<i>Supports.</i>
*Protection and Advocacy for Individuals with Mental Illness Act (PAIMI)	H.R. 2646, as introduced, contained provisions that would have mandated that protection and advocacy activities under PAIMI exclusively focus on abuse and neglect and would have restricted programs under the act from engaging in advocacy and litigation on behalf of individuals with serious mental illness. The PAIMI provisions were dropped from H.R. 2646 before it was passed by the House, and some of its provisions were later incorporated into P.L. 114-255 (H.R. 34), a major medical research and mental health bill signed into law on 12/13/16.	<i>Supports funding for the PAIMI programs and opposes certain restrictions on the programs' use of funding.</i>
Elder Law		
*Health Care Provider Standards of Care	P.L. 114-10 (H.R. 2), Medicare Access and Children's Health Insurance Program (CHIP) reauthorization legislation signed 1/16/15, includes "standard of care" provisions making it more difficult to establish a case of negligence in a lawsuit by arguing that there was a violation of federal requirements, including those under the Nursing Home Reform Act of 1987 (NHRA) that recognize a minimum level of care that each resident should receive for a nursing home to participate in the Medicare and Medicaid programs.	<i>Opposes the "standard of care" provisions.</i>



Subject	Description and Status	ABA Position
*Advance Care Planning/ End of Life Counseling	<p>The Centers for Medicare & Medicaid Services (CMS) issued a rule authorizing reimbursement, beginning 1/1/16, to physicians providing advance care planning services to ensure that patients receive the support they need to make informed decisions about their health treatment and care. S. 1549, in addition to authorizing Medicare reimbursement to health care professionals for health care planning services, would have amended the Public Health Service Act to require the Department of Health and Human Services to give priority to the development of quality metrics to assess the effectiveness of advance care plans and would have authorized grants for training, disseminating resources, and conducting a national public education campaign about advance care planning and advance illness care. S. 2961 would have provided federal support to educate patients and providers, develop core end-of-life care quality measure, and test innovations in advance care planning through telemedicine. H.R. 5555, among other things, would have integrated advance care planning into a holistic advanced illness management demonstration program. S. 1569 and S. 2961 were referred to the Senate Finance Committee. H.R. 5555 was referred to the House Ways and Means Committee and the House Energy and Commerce Subcommittee on Health. There was no action on the bills.</p>	<p><i>Supports the CMS rule and the proposed legislation to promote advance care planning.</i></p>
*Elder Abuse	<p>S. 3270 would have enhanced the investigation and prosecution of perpetrators who prey upon seniors, provided for better data collection, and established strong elder abuse prevention programs. The legislation would have required the appointment of elder abuse coordinators in the Justice Department, U.S. attorney offices around the country, and the Federal Trade Commission Bureau of Consumer Protection. S. 2747 and H.R. 5018, among other things, would have established a National Adult Protective Services Resource Center. The Senate Judiciary Committee and the Senate Special Committee on Aging held hearings on protecting older Americans from financial abuse. The Senate Judiciary Committee approved S. 3270. S. 2747 was referred to the Senate Committee on Health, Education, Labor and Pensions. H.R. 5018 was referred to the House Education and the Workforce Committee. There was no action on the bills.</p>	<p><i>Supports legislation to combat elder abuse.</i></p>
*House Permanent Select Committee on Aging	<p>As the number of older adults continues to rapidly grow along with issues facing the senior population, there was some discussion about the possibility of reviving the House Permanent Select Committee on Aging, which existed from 1974 to 1992 as a counterpart to the Senate Select Committee on Aging. During its existence, the House committee held more than 1,000 hearings and issued reports that led to advances on vital issues, including mandatory retirement, age discrimination, the Older Americans Act, elder abuse, guardianship, Medicare, Social Security, pensions, and nursing home standards.</p>	<p><i>Supports reestablishment of the committee.</i></p>



Subject	Description and Status	ABA Position
*Nursing Home Care Protections	The Centers for Medicare & Medicaid Services (CMS) issued final comprehensive regulations on 10/4/16 that establish new requirements for long-term care facilities to ensure they protect the rights of residents, improve their quality of care and life, and ensure resident-centered care. See related entry, Nursing Home Arbitration , under Alternative Dispute Resolution .	<i>Supported the CMS regulations as a substantial step forward, recommending revisions that were adopted in several areas.</i>
*Older Americans Act (OAA)	P.L. 114-144 (S. 192), signed 4/19/16, reauthorizes the OAA for three years and strengthens protections in numerous areas, including defining “adult protective services” to include legal services. P.L. 114-113 (H.R. 2029), fiscal year 2016 consolidated appropriations legislation signed 12/18/16, included \$11.8 million for elder rights activities that encompassed \$8 million for elder justice and adult protective services. P.L. 114-254 (H.R. 2028), fiscal year 2017 continuing appropriations legislation signed 12/10/16, provides funding at fiscal year 2016 levels with a 0.2 percent across-the-board reduction through 4/28/17.	<i>Supports OAA reauthorization. Urges inclusion of provisions encouraging the development of coordinated legal services delivery systems and the strengthening of legal services developers.</i>
*Social Security Administration (SSA) – Administrative Law Judge Hearings	A Senate Homeland Security and Governmental Affairs subcommittee held a hearing to discuss concerns about due process in SSA disability hearings. The hearing focused on a proposal by the SSA Office of Disability Adjudication and Review to shift certain categories of cases from administrative law judge (ALJ) hearings to proceedings presided over by administrative appeals judges (AAJs) and attorney examiners within the agency’s Appeals Council. The SSA office later announced that it would not be moving forward on the proposal at this time.	<i>Opposes the SSA proposal.</i>
*Social Security Administration (SSA) – Representative Payee Fraud	P.L. 114-74 (H.R. 1314), the bipartisan budget legislation signed 11/2/15, includes language derived from S. 1576 to create a new felony specifically for conspiracy to commit Social Security fraud that is punishable by up to five years in prison and fines of up to \$250,000. The new law also provides stiffer penalties of from five to 10 years in prison for individuals in positions of trust, such as claimant representatives, doctors and other health care providers, or current or former SSA employees. Those persons of trust also could also be required to pay civil monetary penalties of from \$5,000 to \$7,500 for each false statement or omission they make to advance a fraudulent transaction.	<i>Supports.</i>



Subject	Description and Status	ABA Position
*Social Security Trust Fund	P.L. 114-74 (H.R. 1314), the bipartisan budget legislation signed 11/2/15, reallocates some payroll tax revenues over the next three years from the Social Security Old Age and Survivors Insurance Trust Fund (OASI) to the Disability Insurance Trust Fund (DI) to prevent depletion of disability benefits. The House had earlier adopted a rule that would have limited options for reallocating funds by setting conditions that would have required either new revenues or benefit cuts for beneficiaries.	<i>Supports the ability of the government to reallocate the funds.</i>
Election Law		
*International Election Observers	At the invitation of the State Department, the Organization for Security and Cooperation in Europe (OSCE) sent a team of international election observers to monitor the November 2016 presidential election in the United States and assess the election for compliance with standards for democratic elections. Observers closely monitored voter and candidate registration, campaign activities, the work of the election administration and relevant government bodies, election-related legislation and its implementation, the media environment, and the resolution of election-related disputes. As part of the observation, the mission also monitored the media coverage of the campaign.	<i>Supports the observation of U.S. elections by OSCE.</i>
◆Voting Rights Act	S. 1659 and H.R. 2867, the Voting Rights Advancement Act, would have restored protections in the Voting Rights Act following the Supreme Court decision in <i>Shelby County v. Holder</i> , 570 U.S. ___ (2013), by instituting a new nationwide coverage formula that provides that a state or political subdivision would be subject to preclearance under Section 5 based on a finding of repeated voting rights violations in the preceding 25 years. A state or political subdivision would continue to be covered for 10 years unless a declaratory judgment is obtained under new “bail-out” provisions. A new section of the act also would have provided that voters must be made aware of late-breaking voting changes in federal elections, polling resources for federal elections, and demographic and electoral data for voting districts for federal, state and local elections. S. 1659 was referred to the Senate Judiciary Committee. H.R. 2867 was referred to the House Judiciary Subcommittee on the Constitution and Civil Justice. There was no action on the bills.	<i>Supports enactment of legislation to address the Shelby decision’s effect on voting rights.</i>



Subject

Description and Status

ABA Position

Federal Agency Regulation of Lawyers

***Department of Labor (DOL) “Persuader” Rule**

The DOL published a final rule in March 2016 to substantially narrow the longstanding “advice” exemption to the “persuader” reporting rule under Section 203 of the Labor Management Reporting and Disclosure Act of 1959. The new rule would have required many labor lawyers and law firms representing employers to report confidential client information to the government in violation of the lawyer’s ethical duty to protect client confidentiality under Rule 1.6 of the ABA Model Rules of Professional Conduct and similar binding state rules. The U.S. District Court of the Northern District of Texas granted a preliminary injunction in June preventing the rule from going into effect in July and issued a nationwide permanent injunction in November blocking the rule. Due to the court injunctions, DOL did not move forward on plans to propose a new rule regarding related changes to consultant Form LM-21 (Receipts and Disbursements Report), which requires all lawyers and law firms engaging in persuader activities to disclose all their receipts of any kind received from all employer clients “on account of labor relations advice or services” and disbursements made in connection with such services, not just those related to persuader activities.

Opposes narrowing the “advice” exemption to the “persuader” rule. Supports reducing the scope of information that must be disclosed under Form LM-21.

◆*Gatekeeper Regulation of Lawyers

S. 174, S. 2489, H.R. 297 and H.R. 4450 would have subjected many lawyers and law firms to the anti-money laundering (AMR) and suspicious activity report (SAR) requirements of the Bank Secrecy Act when they help clients establish companies, trusts or certain other entities. S. 174 was referred to the Senate Finance Committee, and S. 2589 was referred to the Senate Judiciary Committee. H.R. 4450 was referred to the House Financial Services Committee, and H.R. 297 was referred to the House Committees on Financial Services, and Ways and Means. There was no action on the bills. The Treasury Department’s Financial Crimes Enforcement Network (FinCEN) issued a proposed rule in 2012 that would have required legal entities establishing new accounts at financial institutions to disclose their beneficial owners, subject to certain exceptions. The final FinCEN rule issued in May 2016 includes language clarifying that when law firms open escrow or client trust accounts, the law firms need only disclose the beneficial ownership of the law firm, not the identity or beneficial ownership information of their clients for whom the accounts were established.

Opposes the legislation. Supports the final FinCEN language.



Subject	Description and Status	ABA Position
*Federal Deposit Insurance Deposit Corporation (FDIC) Recordkeeping Rule	<p>The FDIC issued a proposed “Recordkeeping for Timely Deposit Insurance Determination” rule in February 2016 to expand recordkeeping and disclosure requirements for all account holders at the nation’s largest banks. The proposed rule, intended to ensure that the FDIC can provide the depositors with prompt access to their insured funds in the event the bank fails, would have required law firms with client trust accounts to disclose extensive confidential client information. When the FDIC published the final rule in December 2016, it included language clarifying that while law firms must continue to maintain complete and detailed records on their Interest on Lawyers’ Trust Accounts (IOLTAs) and other client trust accounts at large banks, confidential client information regarding those accounts need not be disclosed to the bank or the FDIC unless and until the bank actually fails.</p>	<p><i>Supports clarifying language in the final rule.</i></p>
<h2>Immigration Law</h2>		
◆Comprehensive Immigration Reform/ Executive Actions	<p>No action was taken on comprehensive immigration reform legislation. A federal district judge for the Southern District of Texas issued a preliminary injunction in February 2015 halting President Obama’s executive action to expand the Deferred Action for Childhood Arrivals (DACA) program and establish the Deferred Action for Parents of Americans and Legal Permanent Residents (DAPA) initiative to provide temporary deportation relief for as many as 5 million undocumented immigrants. The Fifth Circuit Court of Appeals upheld the preliminary injunction, and the government filed a petition on 11/20/15 appealing the decision to the Supreme Court. The Supreme Court issued a 4-4 decision on 6/23/16, leaving the appeals court ruling in place. The president had issued the executive order in November 2014 after Congress failed during the 113th Congress to pass comprehensive immigration reform legislation, and Texas and 25 other states filed suit, claiming that states could face millions of dollars in additional expenses in benefits for the undocumented aliens.</p>	<p><i>Supports comprehensive legislation that provides for new channels for future workers, a path to legal status for much of the undocumented population in the United States, family- and employment-based visa backlog reduction, and enhanced border security.</i></p>
Immigration Consequences of Conviction	<p>The attorney general issued an order on 4/10/15 vacating the 2008 Justice Department opinion in <i>Matter of Silva-Trevino</i>, which permitted an immigration judge, when ruling on the immigration consequences of criminal convictions, to consider evidence outside the formal record of a noncitizen’s conviction to determine if the conviction involved moral turpitude.</p>	<p><i>Supports the vacating of the opinion.</i></p>



Subject	Description and Status	ABA Position
◆*Detention	<p>Since June 2014, the Department of Homeland Security (DHS) expanded the capacity for detention of families by approximately 1,000 detention spaces and has plans to create an additional 2,500 spaces to respond to the unprecedented numbers of Central American women and children arriving at the U.S. border seeking protection. A federal district judge for the Central District of California ruled in July 2015 that detention of children and their mothers is a violation of a longstanding court settlement and that the families should be released. After giving the government time to respond to the ruling, the judge rejected the government's arguments in August 2015 and upheld the earlier decision that the children and families must be released by 10/23/15. The ABA Commission on Immigration released a report in August 2015 concluding that the federal government's buildup of family detention centers and the detaining of families in jail-like settings violates applicable laws and impinges on the families' due process right to access to counsel and their ability to pursue legal relief based on the merits of their claims. DHS began to use electronic ankle monitors as a condition for release from detention for Central American parents who arrived in the country with their children. The U.S. Civil Rights Commission held a briefing on the U.S. system of immigration detention and recommended that the Department of Homeland Security, its component agencies and any entity contracted to provide detention services adopt the <i>ABA Civil Immigration Detention Standards</i> that were approved by the ABA in 2012.</p>	<p><i>Opposes detention of families and children and other immigration detention except in circumstances where the individual presents a threat to national security or public safety, or is a flight risk. Supports humane alternatives to ensuring individuals appear in court and supports consistent standards for those who are detained to ensure individual rights and humane treatment. Opposes the use of ankle monitors as a condition for release except as a last resort.</i></p>
◆Immigration Courts	<p>P.L. 114-113 (H.R. 2029), consolidated fiscal year 2016 appropriations legislation signed 12/18/15, included a \$76 million increase to \$427 million for the Executive Office for Immigration Review (EOIR) to support 55 additional immigration judge teams. P.L. 114-254 (H.R. 2028), fiscal year 2017 continuing appropriations legislation signed 12/10/16, provides funding at fiscal year 2016 levels with a 0.2 percent across-the-board reduction through 4/28/17.</p>	<p><i>Supports measures to improve the immigration court system and due process safeguards, including access to counsel for those in removal proceedings. Urges EOIR to increase the number of permanent immigration judges and support staff.</i></p>
*Overseas Refugee Representation	<p>The Department of Homeland Security (DHS) bans access to counsel in overseas refugee interviews even though refugees applying for resettlement through the U.S. Refugee Admission Program are required to navigate a complicated admission process that includes a minimum of four interviews with United Nations and U.S. officials and to submit numerous documents for both evidentiary and identification purposes.</p>	<p><i>Urges DHS to reverse the ban, maintaining that refugees are entitled to representation by counsel under implementing regulations for the Immigration and Nationality Act and the Administrative Procedure Act.</i></p>



Subject	Description and Status	ABA Position
◆Deferred Action for Childhood Arrivals (DACA)/DREAM Act	<p>The president's attempt to expand the DACA program through a series of executive actions in November 2014 was blocked in February 2015 by a federal district judge in the Central District of Texas in a decision that was upheld by the Fifth Circuit Court of Appeals. The Obama administration appealed the decision to the Supreme Court, where a 4-4 decision on 6/23/16 upheld the appeals court ruling. DACA, established by the president in 2012 when Congress did not enact similar provisions known as the DREAM Act, allows for adjustment of status to legal permanent resident for minors who entered the United States before the age of 16, have been present in the country for at least five years prior to enactment, have not committed any crimes, have been admitted to an institution of higher education or received a high school diploma or General Equivalency Diploma, or have served in the military. The president's executive actions would have expanded the program to include illegal immigrants who arrived in the country as children before 2010, eliminated the requirement that applicants be younger than 31 years old, and lengthened the renewable deferral period from two to three years. In response to the possibility that DACA may be repealed by the new presidential administration, S. 3542 was introduced to provide "provisional protected presence" for current DACA enrollees and others who meet the eligibility criteria. S. 3542 was referred to the Senate Judiciary Committee, where there was no action on the bill. There was no comparable House legislation.</p>	<p><i>Supports a path to citizenship for undocumented persons who entered the United States as minors and have developed significant equitable ties to the United States.</i></p>
*U.S. Resettlement of Syrian, Iraqi or Muslim Refugees	<p>S. 2300 and H.R. 4038 included provisions to delay or halt U.S. resettlement of Syrian and Iraqi refugees by instituting additional screening and background checks and requiring high-level U.S. officials to verify that each refugee from Syria and Iraq poses no security risk before they are allowed into the United States. The House passed H.R. 4038. The Senate failed to garner the 60 votes necessary to bring H.R. 4038 up for consideration on the Senate floor. S. 2300 was referred to the Senate Judiciary Committee, where there was no action on the bill.</p>	<p><i>Opposes legislative proposals that would delay or halt U.S. resettlement of refugees based on their religion or national origin.</i></p>
◆*Unaccompanied Immigrant Children/ Access to Counsel	<p>The southwest border of the United States experienced another influx of unaccompanied children from Central America during the past two years, and the ABA continues to collaborate with the Obama administration to enhance access to legal representation for the children in the immigration court system nationwide. The ABA's Working Group on Unaccompanied Minor Immigrants recruits, trains and mentors additional attorneys, and the association provides information and resources through its Immigration Child Advocacy Network website.</p>	<p><i>Supports appointment of counsel at government expense to represent unaccompanied children in immigration proceedings.</i></p>



Subject	Description and Status	ABA Position
<h2>Intellectual Property Law</h2>		
U.S. Patent and Trademark Office (USPTO) Funding	P.L. 114-113 (H.R. 2029), consolidated fiscal year 2016 appropriations legislation signed 12/18/15, included \$3.3 billion for the USPTO, which is the estimated amount of fees to be collected by the office during fiscal year 2016. The legislation maintains a provision allowing the USPTO to use any excess collected fees, subject to congressional approval. P.L. 114-254 (H.R. 2028), fiscal year 2017 continuing appropriations legislation signed 12/10/16, provides funding at fiscal year 2016 levels with a 0.2 percent across-the-board reduction through 4/28/17.	<i>Supports adequate funding for the USPTO and opposes diversion of patent user fees to fund other programs.</i>
*Patent Trolls	S. 1137 and H.R. 9 sought to reduce abusive litigation practices in patent cases by litigants identified as “patent assertion entities” or “patent trolls,” which are entities alleged to acquire and hold patents primarily to extract extortionist settlements and judgments rather than to provide products and services to the public. The Senate Judiciary Committee approved S. 1137. The House Judiciary Committee approved H.R. 9. The Senate Small Business and Entrepreneurship Committee held a hearing on the legislation.	<i>Recognized significant improvements from earlier bills but urged continued review and refinement of the legislation.</i>
<h2>International Law</h2>		
*Arms Sales	S.J. Res. 39 would have prohibited 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 in operations in Yemen for indiscriminate and disproportionate attacks on civilians. The Senate voted to table a motion to bring the measure to a vote. There was no comparable House resolution.	<i>Supports strict adherence to the law of armed conflict and has called for investigations into alleged violations.</i>
◆*International Affairs Budget – Rule of Law	P.L. 114-113 (H.R. 2029), consolidated fiscal year 2016 appropriations legislation signed 12/18/15, included: \$1.4 billion for membership in international organizations, including the United Nations; \$1.28 billion for Agency for International Development operating expenses; \$2.46 billion for international peacekeeping activities; \$2.3 billion for democracy programs; and \$72 million for efforts to combat human trafficking, prosecute traffickers, and provide necessary services for victims. P.L. 114-254 (H.R. 2028), fiscal year 2017 continuing appropriations legislation signed 12/10/16, provides funding at fiscal year 2016 levels with a 0.2 percent across-the-board reduction through 4/28/17.	<i>Supports funding for organizations and programs that assist in the establishment of the rule of law abroad.</i>



Subject	Description and Status	ABA Position
*Indian Legal Services Liberalization	<p>In 2015, the Indian government formed an inter-ministerial working group to consult with relevant stakeholders and consider proposals to liberalize the legal services market. In July 2016, the Bar Council of India (BCI) produced draft rules that would have allowed foreign lawyers and law firms to establish offices in the country to practice non-Indian law. After some objections were heard and several alternative proposals were put forward, the BCI withdrew the draft rules in September 2016. After a series of consultations between BCI, Indian government officials and other stakeholders, it was reported that a new proposal was being considered to incorporate foreign lawyer issues into a larger reform of the Indian legal profession through potential amendments to the Advocates Act to be considered by Parliament in 2017. In addition, litigation seeking to prevent foreign lawyers and law firms from offering services in India even on a temporary basis, through “fly-in/fly-out,” remains pending in the Indian Supreme Court.</p>	<p><i>Supports reciprocal treatment of U.S.-licensed lawyers in India similar to the U.S. practice of allowing overseas licensed lawyers to provide legal services in the United States.</i></p>
*Malaysian Bar	<p>The Malaysian government released proposed amendments to the Legal Profession Act of 1976 that appear to be inconsistent with international legal principles and could severely undermine the independence of the Malaysian legal profession. The proposals include allowing the Malaysian government to appoint members to represent the government on the Bar Council and the executive body of the Malaysian Bar, and allowing the minister in charge of legal affairs in Malaysia to determine the electoral rules and regulations of the Malaysian Bar.</p>	<p><i>Opposes the proposed amendments.</i></p>
*Punishment for Crimes Against Humanity	<p>Current law does not provide for federal criminal jurisdiction over individuals present in the United States who may have committed crimes against humanity abroad, and draft legislative proposals were circulated during the 114th Congress for legislation that would close this gap in the law. No legislation was introduced.</p>	<p><i>Supports enactment of legislation to close the gap.</i></p>
*U.S.-Korea Free Trade Agreement (FTA)	<p>The Korean Ministry of Justice proclaimed amendments to the Foreign Legal Consultant Act to implement phase 3 of the legal services provisions of the U.S.-Korea FTA that is more restrictive than what is required under the trade agreement. The amendments, among other things, define a “joint venture” to include only a separately capitalized de novo judicial person with a foreign law firm partner and a Korean law firm partner as equity holders, 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 to have been in existence for a certain number of years and have a minimum number of Korea-qualified partners.</p>	<p><i>Urges the Korean government to reconsider the amendments. Supports 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.</i></p>



Subject	Description and Status	ABA Position
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Legal Education

◆*John R. Justice Prosecutors and Defenders Incentive Act

P.L. 114-113 (H.R. 2029), consolidated fiscal year 2016 appropriations legislation signed 12/18/15, included \$2 million for the John R. Justice Prosecutors and Defenders Incentive Act for student loan repayment assistance for lawyers employed as state prosecutors and as federal and state public defenders. P.L. 114-254 (H.R. 2028), fiscal year 2017 continuing appropriations legislation signed 12/10/16, provides funding at fiscal year 2016 levels with a 0.2 percent across-the-board reduction through 4/28/17.

Supports.

◆*Public Service Loan Forgiveness Program (PSLF)

The president included provisions in his fiscal year 2016 budget that would have modified PSLF to set a limit of \$57,500 on the amount of federal student loans that may be forgiven under the program, but the proposal was not included in P.L. 114-113 (H.R. 2029), consolidated fiscal year 2016 appropriations legislation signed 12/18/15. H. Con. Res. 27, a fiscal year 2016 budget resolution, and H. Con. Res. 125, a fiscal year 2017 budget resolution, would have assumed elimination of funding for the program. The House passed H. Con. Res. 27. The House Budget Committee approved H. Con. Res. 125. In 2016, the Department of Education rescinded without explanation the ABA’s status as a qualified employer under PSLF. The association filed a lawsuit with four individual plaintiffs against the department on 12/20/16 requesting that the court order the department to restore its interpretation of the law recognizing the ABA and many other non-profits that have been affected as public service organizations that employ individuals in public service jobs for the purposes of the PSLF program.

Supports PSLF and launched the “Save #Loan4Givenness” social media campaign opposing any effort to make sweeping changes to or otherwise undermine PSLF. Supports restoration of ABA’s status as a qualified employer under the program.

Legal Services

◆*Legal Services Corporation (LSC)

The House Budget Committee approved a fiscal year 2017 budget resolution, H. Con. Res. 125, that would have zeroed out funding for LSC. P.L. 114-113 (H.R. 2029), consolidated fiscal year 2016 appropriations legislation signed 12/18/15, included \$385 million for the LSC, a \$10 million increase in funding. P.L. 114-254 (H.R. 2028), fiscal year 2017 continuing appropriations legislation signed 12/10/16, provides funding at fiscal year 2016 levels with a 0.2 percent across-the-board reduction through 4/28/17.

Supports the adequate funding of LSC to increase the effectiveness and efficiency of the delivery of legal services to the poor.



Subject	Description and Status	ABA Position
<h2>Military Law</h2>		
*Uniform Code of Military Justice	P.L. 114-328 (S. 2943), defense authorization legislation signed 12/23/16, includes provisions that substantially reform court-martial procedures in the military but retain an accused's right in a court-martial to choose whether to be sentenced by court members or by a military judge in non-capital offense cases. If an accused chooses to be sentenced by a panel, the panel will assign a "unitary" sentence for all offenses as it does now. If a military judge does the sentencing, a new provision requires segmented sentencing for each offense similar to the practice used in most civilian proceedings.	<i>Supports retaining accused's right to choose sentencing forum. No position on segmented sentencing provision.</i>
<h2>National Security</h2>		
◆*Guantanamo Detainees	P.L. 114-92 (S. 1356), fiscal year 2016 defense authorization legislation signed 11/25/15; P.L. 114-113 (H.R. 2029), consolidated fiscal year 2016 appropriations legislation signed 12/18/15; P.L. 114-328 (S. 2943), fiscal year 2017 defense authorization legislation signed 12/23/16; and P.L. 114-254 (H.R. 2028), fiscal year 2017 continuing appropriations legislation signed 12/10/16, maintained provisions prohibiting the following: the use of appropriated funds for the transfer of detainees at Guantanamo Bay to the United States for any purpose, including prosecution in Article III courts; construction or modification of facilities in the United States to house detainees; the release of detainees to Libya, Somalia, Syria or Yemen; and the use of funds to close Guantanamo. The statutes continue the onerous overseas transfer restrictions that were originally enacted in 2013 but had been reduced in 2014 and 2015.	<i>Supports prosecution in Article III federal courts of detainees at Guantanamo Bay charged with criminal law violations unless the attorney general certifies that prosecution cannot take place before such courts. Urges the prompt release or transfer of detainees no longer considered enemy combatants.</i>
◆*Cybersecurity	P.L. 114-113 (H.R. 2029), consolidated fiscal year 2016 appropriations legislation signed 12/18/15, includes a cybersecurity package that, among other things, encourages cyber threat information sharing between private companies and the government and provides liability protection for companies that share cyber threat data with the government. The president issued an executive order authorizing sanctions on individuals or entities that are responsible for, are compliant in, or engage in malicious cyber activity directed from abroad. The House Homeland Security Committee held an oversight hearing on the 2015 cybersecurity law.	<i>Supports five principles to be considered by the executive and legislative branches when making policy determinations for improving cybersecurity for the U.S. public and private sectors. Supports provisions in P.L. 114-113 encouraging cyber risk information sharing and collaboration between government agencies and private industry.</i>



Subject	Description and Status	ABA Position
Central Intelligence Agency (CIA) Detention and Interrogation	<p>While the Obama administration did not declassify a report prepared by the Senate Select Committee on Intelligence that covers CIA activities following the terrorist attacks of Sept. 11, 2001, the administration did decide to preserve the full 6,700-page report, <i>Study of the Central Intelligence Agency's Detention and Interrogation Programs</i>, under the Presidential Records Act. Judge Royce Lamberth of the U.S. District Court for the District of Columbia also ordered on 12/28/16 that the report be preserved as part of the evidence in the case of <i>Al Nashiri v. Obama</i>. A redacted version of the <i>Conclusions and Executive Summary</i> of the report was released in 2014.</p>	<p><i>Supports public release of the study with portions that are essential to national security redacted.</i></p>
◆*Torture Review	<p>P.L. 114-92 (S. 1356), fiscal year 2016 defense authorization legislation signed 11/10/15, requires all U.S. government interrogations that occur outside a law enforcement context to abide by the Army Field Manual on Interrogations, which prohibits enhanced interrogation practices. The most recent periodic report of the United States on its implementation of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment was submitted to an international monitoring committee in November 2014. The administration stated that obligations under Article 16 of the convention apply in places “outside the United States that the U.S. government controls as a governmental authority” but does not clearly define governmental authority.</p>	<p><i>Condemns any use of torture upon persons within the custody of the U.S. government. Urged the Obama administration to undertake a new comprehensive review of allegations that the United States engaged in illegal and inhumane interrogation following the terrorist attacks of September 2001 and to clarify the interpretation of the extraterritorial application of the U.N. Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.</i></p>
Tax Law		
*Internal Revenue Service (IRS) Funding	<p>P.L. 114-113 (H.R. 2029), consolidated fiscal year 2016 appropriations legislation signed 12/18/15, included \$11.235 billion for the IRS. P.L. 114-254 (H.R. 2028), fiscal year 2017 continuing appropriations legislation signed 12/10/16, provides funding at fiscal year 2016 levels with a 0.2 percent across-the-board reduction through 4/28/17.</p>	<p><i>Supports adequate funding for the IRS to fulfill its mission.</i></p>
*Donee Substantiation Requirements	<p>The Internal Revenue Service (IRS) withdrew a proposed rule that would have created a new specific-use information return to be used for reporting by donee organizations that would have required collection and maintenance of Social Security numbers by the organizations.</p>	<p><i>Opposes the proposed rule due to potential costs to donees, inhibition of donations, and increased risk of identity theft of donor Social Security numbers.</i></p>



Subject	Description and Status	ABA Position
◆*Tax Reform Affecting Lawyers – Mandatory Accrual Accounting	House Ways and Means and Senate Finance Committee draft proposals based on Section 3301 of H.R. 1 (113th Congress) and Section 51 of a similar Senate draft proposal would have required all law firms and other personal services businesses with annual gross receipts over \$10 million to use the accrual method of accounting, which requires payment of taxes on income not yet received rather than the traditional cash receipts and disbursements method permitted under current law. The Senate Finance Committee set up a series of tax reform working groups to receive comments on various tax proposals, and the Business Income Tax Working Group issued a report to the full committee listing the mandatory accrual accounting proposals as viable options for the committee to consider as part of comprehensive tax reform. A new House Tax Reform Task Force was established to continue studying various tax reform proposals. The House Ways and Means Subcommittee on Tax Policy held hearings on fundamental tax reform proposals. The Senate and House committees did not release any comprehensive tax reform proposals, but the president’s proposed budget for fiscal year 2016 contained language that would have expanded the availability of cash accounting for many small businesses but would not have forced law firms and other personal service businesses that are currently allowed to use cash accounting to switch to the accrual method.	<i>Opposes mandatory accrual accounting proposals.</i>
Tort Law		
*Medical Liability	H.R. 4771 would have preempted state laws to cap non-economic damages in medical liability cases at \$250,000 and place limits on contingency fees that lawyers can charge. The bill also would have preempted existing state laws that provide for joint and several liability in medical liability cases by creating a “fair share rule” under which each party would be liable for its part of any damages. The House Judiciary Committee began marking up H.R. 4771 but did not complete action on the bill. There was no comparable Senate legislation.	<i>Opposes.</i>
*Medicare Secondary Payer Act	S. 1514 and H.R. 2649 would have amended the Social Security Act to create an exemption to Medicare secondary payer requirements for certain workers’ compensation settlement agreements and provide for the satisfaction of such requirements through use of qualified Medicare set-asides under such agreements. S. 1514 was referred to the Senate Finance Committee. H.R. 2649 was referred to the House Ways and Means Committee and the House Energy and Commerce Subcommittee on Health. There was no action on the bills.	<i>Supports legislation to clarify the Medicare set-aside process for both workers’ compensation and liability cases.</i>



Subject	Description and Status	ABA Position
◆Terrorism Risk Insurance Act (TRIA)	P.L. 114-1 (H.R. 26), signed 1/12/15, provides a six-year authorization for TRIA, which requires that commercial property and casualty insurers offer to include terrorism coverage in the policies they sell.	<i>Supports.</i>
<h2>Veterans' Affairs</h2>		
◆*Homeless Veterans	P.L. 114-315 (H.R. 6416), veterans reform legislation signed 12/16/16, seeks to improve care and benefits for veterans, including provisions of S. 1731, which prevents exclusion of veterans with other than honorable discharges from the military from Department of Veterans Affairs (VA) shelter programs for homeless veterans. The new law also includes the provisions of H.R. 627, to include veterans or their family members who are fleeing domestic violence or dangerous situations in their housing as "homeless veterans." S. 684 and H.R. 6046 included a provision to authorize the VA to enter into partnerships with public or private entities to provide legal services to homeless veterans and veterans at risk of homelessness. S. 425 and H.R. 474 would have reauthorized the VA homeless veterans reintegration programs through fiscal year 2020. The House passed H.R. 474. The Senate Veterans' Affairs Committee held a hearing on S. 684 and included the bill's provisions in S. 425, an omnibus bill approved by the committee to support veterans.	<i>Supports.</i>
◆Veterans Treatment Courts	P.L. 114-113 (H.R. 2029), consolidated fiscal year 2016 appropriations legislation signed 12/18/15, included \$6 million for a veterans treatment courts program under the Department of Justice. P.L. 114-254 (H.R. 2028), fiscal year 2017 continuing appropriations legislation signed 12/10/16, provides funding at fiscal year 2016 levels with a 0.2 percent across-the-board reduction through 4/28/17. P.L. 114-198 (S. 524), comprehensive addiction and recovery legislation signed 7/22/16, authorizes grants to establish or expand veterans treatment courts programs and a variety of services, including civil legal services, for veterans who have been incarcerated. S. 2120 would have codified the existing Veterans Justice Outreach Program (VJO) created by the Department of Veterans Affairs Office of General Counsel. VJO specialists serve as resources to judges presiding over veterans treatment courts. S. 993 and H.R. 1854 would have expanded assistance provided under the Mentally Ill Offender Treatment and Reduction Act of 2004 and included funding for veterans treatment courts. The Senate passed S. 993. H.R. 1854 was referred to the House Judiciary Subcommittee on Crime, Terrorism, Homeland Security, and Investigations, where there was no action on the bill.	<i>Supports.</i>



2017 Congressional Schedule First Session, 115th Congress

Senate

Convenes for business **Jan. 3**
 Inauguration Day **Jan. 20**
 State Work Period **Feb. 20-24**
 President addresses Congress **Feb. 28**
 State Work Period **April 10-21**
 State Work Period **March 16-17**
 State Work Period **May 29-June 2**
 State Work Period **July 3-7**
 State Work Period **July 31-Sept. 4**
 State Work Period **Sept. 21-22**
 Senate Work Period **Oct. 6-13**
 State Work Period **Nov. 20-24**
 Target Adjournment **Dec. 15**

House

Convenes for business **Jan. 3**
 Inauguration Day **Jan. 20**
 District Work Period **Feb. 20-24**
 President addresses Congress **Feb. 28**
 District Work Period **April 7-24**
 District Work Period **May 5-15**
 District Work Period **May 26-June 5**
 District Work Period **July 3-10**
 District Work Period **July 31-Sept. 4**
 District Work Period **Sept. 21-22**
 District Work Period **Oct. 16-20**
 District Work Period **Nov. 20-24**
 Target Adjournment **Dec. 14**



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