President signs Elder Abuse Prevention and Prosecution Act to enhance protections

President Trump signed bipartisan legislation Oct. 18 that supports efforts to better understand, prevent and combat elder abuse.

P.L. 115-69 (S. 178), the Elder Abuse Prevention and Prosecution Act of 2017, which was passed by the Senate Aug. 1 and cleared for the president by the House Oct. 3, includes goals supported by the ABA to enhance the federal government’s response to elder abuse and financial exploitation of seniors.

The legislation, sponsored by Senate Judiciary Committee Chairman Chuck Grassley (R-Iowa) and Sen. Richard Blumenthal (D-Conn.), improves the protection of seniors by:

● increasing data collection and information sharing of abuse and fraud cases;
● increasing training of federal prosecutors and investigators;
● establishing an elder justice coordinator position in both the Federal Trade Commission (FTC) and the Department of Justice; and
● increasing penalties for criminals who target seniors.

“Exploiting and defrauding seniors is cowardly, and these crimes should be addressed as the reprehensible acts they are,” Grassley said after the bill passed. He added that the legislation “sends a clear signal from Congress that combating elder abuse and exploitation should be top priority for law enforcement.”

“Elder abuse is a problem that respects no boundaries,” ABA Governmental Affairs Director Thomas M. Susman conveyed to Congress in a March 1 letter to the Senate Judiciary Committee during consideration of the legislation. “The problem is not defined by socioeconomic, racial or ethnic status, and it occurs with alarming frequency in every state,” he said.

Susman emphasized that elder abuse takes many forms – physical abuse, neglect, financial exploitation, sexual abuse, and emotional or psychological abuse – and it is estimated that only one in 14 cases of abuse is reported to authorities. Despite the underreporting of cases, the National Council on Aging reports that approximately one in 10 Americans 60 years of age or older has experienced some form of abuse, and some estimates show that as many as five million seniors are abused each year.

Also widely underreported is financial exploitation of the elderly, with losses to older Americans at more than $2.9 billion a year along with additional billions of dollars in costs to businesses, families and government programs.

Recent studies show that nearly half of those with dementia experience abuse or neglect and that interpersonal violence occurs at disproportionately higher rates among adults with disabilities. In addition, older Americans who have been victims of abuse have a 300 percent higher mortality rate than those who have not.
## Legislative Boxscore

<table>
<thead>
<tr>
<th>Legislative Issue</th>
<th>House</th>
<th>Senate</th>
<th>Final</th>
<th>ABA Position</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Immigration.</strong> The president announced a new travel ban restricting entry into the country from eight countries. Federal judges temporarily blocked the ban for those seeking entry from six of the eight countries. The federal government is appealing the decisions. The president announced he is phasing out the Deferred Action on Childhood Arrivals (DACA) program by March 2018. S. 1615 and H.R. 3440, the DREAM Act, would continue the program.</td>
<td>H.R. 3440 was referred to Judiciary Cmte. on 7/26/17.</td>
<td>S. 1615 was referred to Judiciary Cmte. on 7/22/17.</td>
<td>Supports improvements in the immigration court and adjudication system. Opposes mandatory detention and supports alternatives to detention. Supports access to counsel and due process safeguards. Supports the DREAM Act. See page 6.</td>
<td></td>
</tr>
<tr>
<td><strong>Legal Services Corporation (LSC).</strong> President’s FY 2018 budget issued on 5/23/17 included no funding for LSC, which is currently funded at $385 million under P.L. 115-31 (H.R. 244).</td>
<td>House approved $300 million for LSC on 9/14/17.</td>
<td>Senate Approps. Cmte approved $385 million for LSC on 7/27/17.</td>
<td>President signed P.L. 115-31 (H.R. 244) on 5/5/17.</td>
<td>Supports an independent, well-funded LSC.</td>
</tr>
</tbody>
</table>
ABA urges State Department to continue to prioritize human rights and the rule of law

ABA President Hilarie Bass urged Secretary of State Rex Tillerson last month to ensure that any reforms at the State Department “reinforce and strengthen the role that core values play in U.S. diplomacy and development assistance.”

Bass said the ABA recognizes the need for reorganizing the department to bring greater efficiencies and effectiveness to its work, but the association is concerned by reports that the reforms might result in a downgrading of the core American values of democracy, human rights, justice and the rule of law.

“Advancing democratic governance, respect for human rights, accountability for atrocity crimes, and respect for the rule of law fosters more peaceful and successful societies in ways that serve U.S. commercial and security interests alike,” she said. “These efforts help counter violence and extremism that threaten our security; they foster stable environments in which U.S. investment and trade can thrive.”

Bass said the ABA appreciates Tillerson’s recent decision to maintain the role of the Ambassador-at-Large for Global Criminal Justice, an action in line with policy adopted by the ABA in August that urges Congress and the State Department to ensure that the United States’ commitment to criminal accountability for mass atrocities is not diminished.

The ambassador-at-large’s office oversees State Department activities coordinating U.S. government positions relating to the international and hybrid courts currently prosecuting persons responsible for genocide, war crimes and crimes against humanity.

The office also works closely with other governments, international institutions, and nongovernmental organizations to establish and assist international and domestic commissions of inquiry, fact-finding missions, and tribunals to investigate, document and prosecute atrocities in every region of the world.

“The department’s efforts to advance human rights and the rule of law – from combating trafficking in persons to supporting international criminal justice, from advancing women’s rights to combating corruption – make the world safer, more stable, and more prosperous, and help cement American leadership in the world,” Bass concluded.

Responding to Bass in an Oct. 3 letter, Tillerson said he shared her desire to support the efforts of strengthening democracy, human rights and governance. As part of the State Department’s redesign process, he said the department and the U.S. Agency for International Development “are working to align our diplomatic and foreign assistance efforts to advance a free, peaceful, and prosperous world.”

ABA president cites success of Second Chance Act

ABA President Hilarie Bass urged the House Judiciary Committee this month to approve H.R. 2899, the Second Chance Reauthorization Act of 2017, a bipartisan bill that would continue federal support for prisoner reentry and recidivism-reduction programs.

“The ABA believes that reauthorization of this act is essential to continuing the evidence-based and cost-effective support for programs that have improved reentry from prisons, jails, and juvenile facilities, reduced recidivism, and increased public safety,” Bass wrote in an Oct. 18 letter to committee Chairman Bob Goodlatte (R-Va.) and Ranking Member John Conyers Jr. (D-Mich.).

Since the act was signed into law in 2008, over 700 grants awarded to government agencies and nonprofit associations in 49 states and the District of Columbia have provided employment training, education, housing and other support to more than 137,000 people transitioning back to community life after completing their sentences.

Bass emphasized that some state programs funded by Second Chance Act grants have reduced re-arrest rates and increased employment and educational opportunities for those participating the programs. She noted that improvements in access to housing are particularly important because housing allows returning citizens to obtain employment and comply with the conditions of their release.

Despite the success of the last nine years, however, Bass pointed out that there is more work to be done as more than 9 million incarcerated individuals are released each year.

“By providing the resources needed to coordinate reentry services and policies at the state and local levels, reauthorization of the Second Chance Act will ensure that the tax dollars spent on corrections do not simply fuel a revolving door in and out of prison,” she said.
Frustrated that Congress has been unable to make progress toward repealing and replacing the Affordable Care Act (ACA), President Trump addressed health care reform through executive action this month.

His first step was an executive order Oct. 12 requiring federal agencies to develop rules to make it easier for small businesses and associations to offer low-cost and short-term limited health insurance plans that would not be subject to current ACA requirements and protections. He then ordered the elimination of subsidies provided to insurance companies that are intended to help low-income Americans pay for their health insurance plans.

Following the president’s actions, Sens. Lamar Alexander (R-Tenn.) and Patty Murray (D-Wash.), who had been working together for months on legislation to stabilize the individual insurance markets, announced Oct. 17 that they had reached a bipartisan agreement that would continue the subsidies for two years and give states flexibility to use existing ACA waivers to approve alternative affordable plans.

Senate Finance Committee Chairman Orrin G. Hatch (R-Utah) and House Ways and Means Committee Chairman Kevin Brady (R-Texas) followed that announcement Oct. 24 with their own plan for temporary two-year funding for the subsidies if certain structural reforms to the ACA are also enacted.

These actions came after the Senate dropped its efforts Sept. 26 to pass legislation that would have partially repealed the ACA and included provisions opposed by the ABA to make significant changes to the Medicaid program, which provides a lifeline for millions of low-income seniors, parents and children.

“The ABA has long recognized the financial burden and responsibility of maintaining the Medicaid program, as well as the need for innovation in shaping more cost-effective health care systems. But we strongly oppose structural or financial changes in the Medicaid program that would weaken the current entitlement nature of the program or the shared legal obligation that the federal and state governments have to provide comprehensive benefits to all individuals who meet eligibility criteria,” ABA Governmental Affairs Director Thomas M. Susman wrote to the Senate Finance Committee as the Senate prepared to consider its bill.

In his Sept. 25 letter, Susman emphasized that significant cuts in Medicaid would impact a large swath of vulnerable Americans across the country, including those who have already spent down their resources paying out of pocket for long-term care and rely on Medicaid for critical home- and community-based services (HCBS), nursing home care, or other services for a family member with disabilities.

The Senate legislation, which had not yet been analyzed by the Congressional Budget Office (CBO), would have replaced the ACA’s subsidized insurance coverage and Medicaid expansion with block grants to the states, where decisions would be made on how to spend the money. Susman expressed the ABA’s opposition to converting federal funding for Medicaid into block grants that might allow states to deny coverage or make coverage out of reach for those with pre-existing conditions.

He pointed out the negative impact of ACA repeal and Medicaid cuts on care provided by HCBS, which is not covered by Medicare or private health insurance but is currently optional under Medicaid to allow older Americans and people with disabilities to stay in their homes. Currently, Medicaid dollars support nearly three older people and adults with disabilities with HCBS for every person in a nursing home, where Medicaid coverage is required.

Susman also warned that weakening Medicaid could devastatingly diminish health care coverage for

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A renewed push for criminal justice reform was launched this month with the introduction on Oct. 4 of S. 1917, a bipartisan proposal seeking changes to sentencing and corrections practices that would lead to a fairer sentencing system and reduce recidivism.

The legislation, sponsored by Senate Judiciary Committee Chairman Charles E. Grassley (R-Iowa), Richard Durbin (D-Ill.) and 10 cosponsors, is similar to a bill supported by the ABA that stalled during the 114th Congress.

“Our justice system demands consequences for those who choose to run afoul of the law, and law enforcement works hard to keep our communities safe,” Grassley said. “This bipartisan compromise ensures that these consequences fit their crimes by targeting violent and career criminals who prey on the innocent while giving nonviolent offenders with minimal criminal histories a better chance to become productive members of society.”

Major provisions in the bill include:

- Narrowing the scope of mandatory minimum sentences to focus on the most serious drug offenders and violent criminals;
- Broadening the existing “safety valve” that allows judges discretion in sentencing lower-level nonviolent offenders; and
- Ensuring retroactive application of the Fair Sentencing Act of 2010, which reduced the disparity in sentencing between crack and powder cocaine.

The bill also would strengthen recidivism-reduction programs by allowing qualified prisoners participating in the programs to earn credits toward early release and the opportunity to spend a portion of their remaining sentence in residential reentry centers, home confinement or under community supervision. In addition, the bill would allow early release of certain nonviolent inmates who are older than 60, terminally ill, or in nursing care.

Another major component of the bill would create a system of parole for juveniles sentenced to life after they have served 20 years of their sentences. The bill also would limit solitary confinement for juveniles in federal custody and allow the records of certain non-violent juveniles to be sealed or expunged.

The ABA, commenting on similar legislation last year, maintained that such legislation takes several important steps forward to reduce reliance on mandatory minimum sentences for low-level drug offenders and to improve fairness and the achievement of justice in the federal system. The association also supports provisions to enhance recidivism-reducing prison programs; expand “compassionate release” for elderly, terminally ill prisoners; ban solitary confinement for juveniles; and permit juveniles to obtain expungement of certain criminal records.

S. 1917 also would establish a National Criminal Justice Commission, an idea long-supported by the ABA. The 14 members of the bipartisan commission — nationally recognized experts in various fields — would undertake a comprehensive 18-month review of all areas of the criminal justice system and develop recommendations for ensuring justice at every step of the system. A bipartisan stand-alone bill to create a commission, S. 573, was introduced in March by Sens. Gary Peters (D-Mich.), Lindsey Graham, (R-S.C.) and John Cornyn (R-Texas). There has been no action on the bill, which has 16 Democratic and 12 Republican cosponsors.

The association has urged enactment of a National Criminal Justice Commission since bills were first introduced during the 111th Congress. Expressing support in previous Congresses, the ABA pointed out that it has been 50 years since the last comprehensive study of the nation’s criminal justice system was conducted and emphasized that it is well past time for another reexamination of criminal justice priorities.

Creation of a commission, according to the association, will help determine which measures hold the promise of reducing the number of future victims, help those who break the law to avoid the downward cycle of recidivism and become contributing members of their communities, and identify and promote cost-savings reforms that have increased public safety in some communities so that the reforms are more widely implemented at all levels of government.
Congress, president continue to grapple with future of the Deferred Action on Childhood Arrivals program

As Congress weighs options for protecting those participating in the Deferred Action on Childhood Arrivals (DACA), President Trump added conditions to his support for any legislation addressing the status of DACA recipients.

DACA, established through executive action by President Obama in 2012, has allowed undocumented youth who were brought to the United States as children to stay if they meet certain criteria. Nearly 800,000 individuals have participated in the program, which has allowed them to go to school, work and serve in the military without fear of deportation.

In September, U.S. Attorney General Jeff Sessions announced that DACA will end in March 2018, questioning the constitutionality of the program because it was implemented unilaterally by President Obama after Congress failed to approve legislation to provide for those who were brought here illegally as children. The decision gives Congress until March to pass a legislative fix.

While the president initially indicated that he supported extending the program if provisions strengthening border security were included in the legislation, he unveiled a long list of additional immigration requirements Oct. 8 that he wants to be part of any DACA bill.

The new list includes the funding and building of a border wall between the United States and Mexico, tightening up the asylum standards, and the hiring of an additional 370 immigration judges and 1,000 Immigration and Customs Enforcement attorneys. Other provisions on the list address action to be taken within the United States, including authorizing states and localities to help enforce federal immigration laws, curbing grants to sanctuary cities, strengthening law enforcement by hiring 10,000 more ICE officers and 300 federal prosecutors, ensuring swift removal of visa overstays, and requiring employers to use E-Verify to determination citizenship status of employees. In addition, the proposals would end extended-family migration by limiting family-based green cards to spouses and minor children.

Several bills have been introduced to provide a legislative solution for DACA recipients. These include S. 1615, the DREAM Act introduced by Sen. Lindsey Graham (R-S.C.) and Sen. Richard Durbin (D-Ill.) and eight others in the Senate, and H.R. 2440, introduced by Rep. Lucille Roybal-Allard (D-Calif.) and Rep. Ileana Ros-Lehtinen (R-Fla.) and 192 cosponsors in the House. The legislation would allow individuals who meet certain requirements to earn lawful permanent residence and eventually U.S. citizenship.

Another proposal, S. 1852, introduced by Sens. Thom Tillis (R-N.C.) and James Lankford (R-Okla.), calls for more conditions to qualify for permanent sta-

Judicial Vacancies/Confirmations—115th Congress*  
(as of 10/26/17)

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<th>Court</th>
<th>Vacancies</th>
<th>Pending Nominations</th>
<th>Confirmations</th>
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<tr>
<td>US Supreme Court (9 judgeships)</td>
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<tr>
<td>US Courts of Appeals (179 judgeships)</td>
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<tr>
<td>US District Courts (678 judgeships)</td>
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<td>2</td>
</tr>
<tr>
<td>Court of International Trade (9 judgeships)</td>
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<td>0</td>
<td>0</td>
</tr>
<tr>
<td><strong>Totals</strong></td>
<td><strong>144</strong></td>
<td><strong>51</strong></td>
<td><strong>7</strong></td>
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*Includes territorial judgeships

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UNESCO: The State Department announced Oct. 12 that the United States will withdraw from the United Nations Educational, Science and Cultural Organization (UNESCO) at the end of 2018, citing U.S. concerns about “mounting arrears at UNESCO, the need for fundamental reform in the organization, and continuing anti-Israel bias at UNESCO.” The United States stopped paying UNESCO dues in 2011 when the organization accepted Palestine as a full member. A statement issued by the department indicated the United States’ interest in remaining engaged with UNESCO as a non-member observer state in order to contribute U.S. views, perspectives and expertise. The statement indicated a particular interest in protecting world heritage, advocating for press freedoms, and promoting scientific collaboration and education. This is not the first time the United States has withdrawn from the international organization, which was established in 1946. President Ronald Reagan cited what he considered UNESCO’s pro-Soviet bias when he withdrew in 1984. The United States rejoined UNESCO in 2002 when President George W. Bush said the United States would participate fully in UNESCO’s mission to advance human rights, tolerance and learning. The ABA has a long history supporting UNESCO’s work and urged the United States to renew its membership during the Bush administration. The association maintained that UNESCO had successfully addressed the budget, management and other concerns that led to U.S. withdrawal in 1984 and that UNESCO’s mission to promote collaboration among nations in education, science, culture and communications was increasingly important during a time of global opportunities and challenges.

ABA receives National Creditors Bar Association award

The National Creditors Bar Association awarded this year’s Donald Kramer Award to the ABA for “tirelessly working to preserve the independence of the legal profession and the judiciary along with the long-standing tradition of the governance of the practice of law by state supreme courts and the state bar associations.”

The award, named after the association’s founder, is presented each year to an individual or group whose efforts “have made a substantial and lasting impact for the benefit of the credit and legal collection industry.” In recognizing the ABA, the group stated it is especially grateful for the ABA’s recent efforts to help advance H.R. 1849, which would exempt creditor lawyers engaged in litigation activities from the Fair Debt Collection Practices Act and from the Consumer Financial Protection Bureau’s regulatory jurisdiction under the Dodd-Frank Act.

ABA President Hilarie Bass designated Honolulu lawyer Marvin S.C. Dang to accept the award on behalf of the ABA at an Oct. 13 ceremony in Washington, D.C. Dang is chair-elect of the ABA Senior Lawyers Division, a member of the ABA Day Planning Committee, and a leader in various ABA entities. He also serves as the National Creditors Bar Association’s parliamentarian, an officer position.

After expressing the ABA’s gratitude for receiving the award, Dang said it has been “our pleasure to work with the National Creditors Bar Association to advance H.R. 1849 – the Practice of Law Technical Clarification Act of 2017 – a critical piece of legislation that would restore traditional state court regulation and oversight of creditor lawyers who file legal actions on behalf of their clients.”
The Senate cleared legislation Oct. 24 that includes provisions to extend 14 temporary bankruptcy judgeships for five years and create four new bankruptcy judgeships.

The bankruptcy judgeship bill, which was used as the vehicle for approving disaster relief in response to recent wildfires and hurricanes, cleared the Senate by an 82-17 vote after overwhelmingly passing the House by a 353-59 vote on Oct. 12.

Sen. Chris Coons (D-Del.) crafted the final version of the legislation, H.R. 2266, which differs from the original legislation passed by the House in May. The earlier House version closely followed the recommendations of the Judicial Conference of the United States that would have made the 14 temporary judgeships permanent and authorized four new judgeships.

The ABA supports the use of authorizing legislation to address the issues facing the bankruptcy courts, noting in a May 9 letter to the House Judiciary Committee that Congress had not created a new bankruptcy judgeship since 1992 and had instead been handling the situation through a piece-meal approach with temporary judgeships. Most recently, the critical temporary judgeships were extended for one year as part of fiscal year 2017 appropriations legislation enacted in May.

ABA President Hilarie Bass commended Coons for crafting a bipartisan solution and shepherding it to passage. “Every year, thousands of individuals and businesses from every state turn to the bankruptcy court system for relief from burdensome debt that threatens to cast families into poverty and close businesses,” she said.

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Health care

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30 million children who are covered by Medicaid and survivors of violence, who are more likely to be living in chronic pain and other chronic health conditions that require continuing screening and services.

The decision to pull the proposal from Senate consideration marked the second time that the Senate was unable to garner the votes necessary to pass legislation to repeal and replace the ACA. The first attempt in July included several proposals, including a bill developed by Senate Majority Leader Mitch McConnell (R-Ky.) and a group of Republican senators that failed by one vote.

The leadership was hoping to pass the most recent legislation, crafted by Sens. Bill Cassidy (R-La.) and Lindsey Graham (R-S.C.), before Sept. 30. After that date, the Senate would no longer be able to consider the legislation under Senate rules as a budget reconciliation bill that would require only a majority of 51 votes to pass.

The House narrowly passed its version of ACA repeal in May. The CBO projected that more than 20 million would lose their health care coverage under both the House bill and the Senate bill that failed in July.