Despite Justice Department opposition, the Senate Judiciary Committee approved bipartisan criminal justice reform legislation Feb 15 by a 16-5 vote.

The Senate bill, S. 1917, sponsored by Senate Judiciary Committee Chairman Charles E. Grassley (R-Iowa) and 22 cosponsors, is the latest effort by Congress to pass meaningful reforms to the criminal justice system and is similar to legislation approved by the committee during the last Congress that never reached the Senate floor for a vote.

Known as the Sentencing Reform and Corrections Act of 2017 (SRCA), the bill contains many ABA-supported provisions, including:

- 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 to use discretion in sentencing lower level nonviolent offenders;
- ending federal juvenile life sentences without parole, banning juvenile solitary confinement, and permitting juveniles to obtain expungement of certain criminal records; and
- establishing a National Criminal Justice Commission to comprehensively review the criminal justice system and make recommendations for criminal justice reform.

ABA President Hilarie Bass expressed the association’s support for the bill in a Jan. 9 letter to the committee, which the association resubmitted on Feb. 9 ahead of the committee vote. In the Jan. 9 letter, Bass emphasized that while the bill does not go as far as in reforming mandatory minimum sentencing as the ABA would like, it makes important steps towards improving fairness and justice in the federal criminal justice system.

Enactment of the legislation “will help focus prosecutorial and correctional resources on offenders who commit serious crimes that pose the greatest risk to public safety and will permit more sentencing flexibility for low-level, non-violent offenders whose role and culpability will now receive more careful and balanced consideration by sentencing judges,” Bass explained.

She further explained that mandatory minimums contribute to the country’s high incarceration rates and exacerbate the level of racial disparity in the correctional system, noting that African Americans and Latinos make up three quarters of the federal prison population.

“This bill offers substantive revisions to the federal sentencing system that will help reduce our reliance on lengthy prison terms for low-level offenses, lessen the disparate impact of federal sentencing policies on African Americans and Latinos, and change direction away from policies that are unsustainable,” Bass noted.
**LEGISLATIVE BOXSCORE**

<table>
<thead>
<tr>
<th>LEGISLATIVE ISSUE</th>
<th>HOUSE</th>
<th>SENATE</th>
<th>FINAL</th>
<th>ABA POSITION</th>
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<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 Supreme Court has allowed some of the restrictions to go into effect. The president announced he is phasing out the Deferred Action on Childhood Arrivals (DACA) program by March 5, 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. Senate failed to pass several proposals to address the DACA program.</td>
<td></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 10.</td>
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Delegates approves host of new policies at Midyear Meeting

The ABA House of Delegates, convening Feb. 5 during the association's Midyear Meeting in Vancouver, adopted numerous new policies that address pressing legal issues.

The new policies include support for providing more access to the courts for low-income individuals, prohibiting the death penalty for those who were 21 or younger at the time of their crimes, enacting legislation to protect DREAMERS, and prohibiting discrimination based on sexual orientation and/or gender identity or expression.

The delegates also adopted policies on issues facing the legal profession, including providing women lawyers with more opportunities and directing attention to the mental health and well-being of lawyers.

Highlights of the Midyear Meeting included panel discussions focusing on issues ranging from immigration to homeless youth. The Commission on the Future of Legal Education also launched a series of open forums.

During the House of Delegates meeting, ABA President Hilarie Bass emphasized the ABA’s power to provide leadership to individuals and institutions, zeroing in on the ABA’s advocacy supporting criminal justice and immigration reform, the rule of law and the federal judiciary, and opposing mandatory accrual accounting for law firms.

The selection of Judy Perry Martinez, of New Orleans, as ABA president-elect nominee was another high point. If elected in August, she would serve one year as president-elect before assuming the association’s presidency in August 2019 (see article, page 5).

The following is a summary of the new legislative policies adopted by the delegates.

**Civil Rights /Discrimination Jurors.** Urges courts at all levels to apply the Supreme Court ruling in *Baton v. Kentucky*, 476 U.S. 79 (1986), to sexual orientation and gender identity/expression. The ruling held that the Equal Protection Clause precludes the use of peremptory challenges to strike prospective jurors based solely on their race and was later extended in 1994 to preclude removal because of gender.

**Death Penalty.** Without taking a position supporting or opposing the death penalty, urges each death penalty jurisdiction not to execute or sentence to death anyone who was 21 years old or younger at the time of their offense.

**Employment Discrimination.** Supports an interpretation of Title VII of the Civil Rights Act of 1964, 433 U.S. 1 (1981), which has severely limited relief to plaintiffs suffering environmental harm. Supports legislation enabling plaintiffs to bring constitutional claims in lieu of a statutory cause of action based upon environmental harm due to governmental acts or omissions.

**HIV/AIDS:** Urges governments and relevant private entities to ensure health care equity for HIV populations, to maintain evidence-based information pertaining to HIV, to combat housing discrimination based on HIV, and to not criminalize HIV status or HIV nondisclosure.

**Harassment.** Urges all employers, and specifically all employers in the legal profession, to adopt and enforce policies and procedures that prohibit, prevent, and promptly redress harassment and retaliation based on sex, gender, gender identity, sexual orientation, and the intersectionality of sex with race and/or ethnicity.

**Criminal Justice**

**Solitary Confinement.** Urges legislative bodies and government agencies to enact laws and adopt
policies that would prohibit the use of solitary confinement for certain specific classes of detainees and provide that solitary confinement should be used only in exceptional cases as a measure of last resort.

**Forensic Evidence.** Urges legislatures to enact legislation creating a substantive right and procedures

**Domestic and Sexual Violence Violence Against Women Act (VAWA).** Urges Congress and the president to reauthorize, raise the appropriation level of, and fully fund the VAWA Legal Assistance for Victims Grant Program.

**Elder Law Social Security.** Urges Congress and the Social Security Administration (SSA) to strengthen the safeguards and protections for all beneficiaries – both individuals and organizations – of the SSA representative payee program, under which a representative payee receives and spends benefits on behalf of a beneficiary if the SSA deems that the beneficiary cannot independently manage funds.

**Homelessness Courts.** Supports the development of integrated, systemic approaches within administrative, civil and criminal court contexts to address the special needs of youth and young adults experiencing homelessness. Urges lawmakers to work with the legal profession to effectuate specified goals.

**Children in Street Situations.** Endorses General Comment No. 21 on Children in Street Situations, which was issued in June 2017 by the United Nations Committee on the Rights of the Child. Urges development of comprehensive long-term strategies to realize the rights of children living in street situations. Reaffirms support for ratification of the United Nations Convention on the Rights of the Child.

**Immigration Dreamers.** Urges Congress to enact legislation permitting Deferred Action for Childhood Arrivals (DACA) recipients and other undocumented immigrants who were brought to the United States as children and who meet age, residency, educational and other qualifications, including background checks and good legal standing, to apply for permanent legal status and citizenship. Urges the Department of Homeland Security to exercise discretion, consistent with legal authority, to refrain from apprehending, detaining, or removing Dreamers.

**Intellectual Property Evidentiary Privilege.** Urges federal courts, Congress and the U.S. Patent and Trademark Office (USPTO) to adopt rules or enact legislation to establish an evidentiary privilege by courts in civil actions and USPTO proceedings for confidential communications between a client and a patent agency licensed by the USPTO that are reasonably necessary and incidental to the limited activities authorized by the Patent Act.

**Copyright.** Supports efforts in Congress and federal courts to allow the filing of a copyright infringement action once a proper application for registration of a
ABA Washington Letter  Page 5

***Midyear Meeting***

Martinez sees powerful role for ABA voice

ABA President-Elect Nominee Judy Perry Martinez pledged Feb. 5 that with the ABA’s collective voice and help from the leaders of the profession, the ABA “will rise to a new zenith, as it serves its members, defends liberty, and achieves justice.”

Martinez, a New Orleans lawyer who was nominated during the association Midyear Meeting in Vancouver, is currently Of Counsel at Simon, Peragine, Smith and Redfearn. She previously served at the firm from 1982 to 2003, when she left for a position at Northrop Grumman, where she was Vice President and Chief Compliance Officer when she retired from the company in 2015. She spent a year in residence as a Fellow at the Advanced Leadership Initiative at Harvard before rejoining the law firm in 2016.

Martinez has held many ABA leadership positions, notably serving as chair of the ABA Presidential Commission on the Future of Legal Services, chair of the ABA Commission on Domestic & Sexual Violence, chair of the Standing Committee on the Federal Judiciary, chair of the Young Lawyers Division, and as lead ABA representative to the United Nations.

She is currently a special advisor to the ABA Center on Innovation and is a member of the House of Delegates, where she has served since 1991.

In her home state of Louisiana, she has received numerous awards, including the Louisiana Bar’s Distinguished Attorney in 2001, Outstanding Young Lawyer in the State of Louisiana in 1990, the Louisiana State Bar Association (LSBA) President’s Award, and a David A. Hamilton Lifetime Achievement Award from the LSBA.

Martinez holds a Bachelor of Science from the University of New Orleans and a J.D. from Tulane University.

copyright has been delivered to the Copyright Office.

International Trade


Legal Education

Branch Campuses. Concurs in the action of the Council of the Section of Legal Education and Admissions to the Bar in adopting amendments dated February 2018 to Standard 106 (Separate Locations and Branch Campuses) of the ABA Standards and Rules of Procedures for Approval of Law Schools.

Legal Profession

Courtroom Experience. Encourages law firms to develop initiatives to provide women lawyers with opportunities to gain trial and courtroom experience.

Lawyer Well-Being. Urges stakeholders, where appropriate, to consider the recommendations set out in The Path to Lawyer Well-Being: Practical Recommendations for Positive Change, a report by the National Task Force on Lawyer Well-Being.

Legal Research

Law Library of Congress. Urges Congress to approve appropriations necessary to enable the Law Library of Congress to adequately staff, modernize, and enhance its services, collections, facilities, digital projects, and outreach efforts.

Legal Services

Legal Representation. Urges governments to provide legal counsel as a matter of right at public expense to low-income persons in all proceedings that may result in a loss of physical liberty, regardless of whether the proceedings are criminal or civil, or are initiated or prosecuted by a government entity. Urges courts not to accept an in-court waiver of the right to appointed counsel in cases that may result in loss of liberty unless the person has had the opportunity to confer with a lawyer.

Military Law

Divorce. Urges Congress to repeal Section 641 of the National Defense Authorization Act for Fiscal Year 2017, which dictates a single, pre-determined outcome in divorce and property division cases involving military retired pay. Opposes enactment of federal legislation that overrides the discretion and authority of state legislatures and courts to determine the fair, just and equitable division of military pensions.

see “Midyear Meeting,” page 8
Budget agreement extends FY 2018 funding through March 23; provides supplemental disaster funds for LSC

A budget agreement enacted Feb. 9 continues funding for the Legal Services Corporation (LSC) through March 23 at its fiscal year 2017 appropriations level of $385 million and provides the LSC with $15 million in additional funds for mobile resources, technology and disaster coordinators to respond to last year’s hurricanes and wildfires.

P.L. 115-123 (H.R. 1892) marks the fourth time Congress was forced to continue funding for the federal government on a temporary basis for fiscal year 2018, which runs from Oct. 1, 2017, to Sept. 30, 2018.

The ABA, a strong supporter of the LSC, urged Congress, through meetings with House staff, to provide the supplemental disaster appropriations to address legal needs arising during the aftermath of the wildfires of California and Hurricanes Harvey, Irma and Maria.

Working together, the ABA Governmental Affairs Office and the association’s Standing Committee on Disaster Response and Preparedness coordinated a letter to Congress signed by nine disaster relief organizations supporting the additional funding. The letter, sent on June 29, 2017, emphasized that during disasters LSC handles the federal role in justice for all, maintaining regular communication with the American Red Cross and the Federal Emergency Management Agency to coordinate response, convening regular national legal aid disaster network calls, and sponsoring www.disasterlegalaid.org, the National Disaster Legal Aid website.

Meanwhile, President Trump followed enactment of the budget agreement with his fiscal year 2019 budget, which once again calls for only a $18.2 million appropriation for the LSC to be used to close out the program.

In response, ABA President Hilarie Bass said the president’s proposal to defund the LSC, in the face of strong bipartisan agreement over the value of LSC’s important work, is “unwarranted and should be dead on arrival.”

She explained that the success of the federal funding used to provide legal access to nearly 1.9 million veterans, senior, domestic violence survivors, natural disaster victims, and others has been confirmed in more than 30 cost-benefit analyses.

“The vast unmet need for legal services nationwide argues for a funding increase for this important program,” she said. “At a bare minimum, continued funding for LSC is critical to fulfilling our nation’s promise of justice for all and equal justice under the law.”

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<thead>
<tr>
<th>Court</th>
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<th>Confirmations</th>
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<td>Court of International Trade (9 judgeships)</td>
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<tr>
<td>Totals</td>
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*Includes territorial judgeships
COURT IMPROVEMENT PROGRAM: The ABA is urging the House and Senate to pass bipartisan legislation to reauthorize the Court Improvement Program (CIP), a critical program that provides the only federal funds to the state courts for improving legal processes in the child welfare system. H.R. 4461 and S. 2173, the Continuation of Useful Resources to States (COURTS) Act, would reauthorize CIP for four years. CIP serves all 50 states, the District of Columbia, Puerto Rico, and the U.S. Virgin Islands. Every state receives $255,000 with additional funding based on the number of children ages 0-18 living in the state. Each state may use this funding for the court improvement projects deemed most important in its jurisdiction, including judicial training, data sharing between agencies and courts, and mediation programs. ABA Governmental Affairs Director Thomas M. Susman emphasized in letters sent Dec. 20 and Feb. 27 to the House and Senate leadership that because the number of children entering foster care has grown in many states, court caseloads have correspondingly increased. As a result, he explained, “additional federal financial assistance has become imperative.”

CYBERSECURITY: U.S. Attorney General Jeff Sessions announced Feb. 20 that he is establishing a Cyber-Digital Task Force to focus on cyber threats. Deputy Attorney General Rod J. Rosenstein will appoint a senior Justice Department (DOJ) official to chair the task force, which will include representatives from: the DOJ Criminal and National Security Divisions; the Federal Bureau of Investigation; the U.S. Attorney’s Office community; the Office of Legal Policy; the Office of Privacy and Civil Liberties; the Office of the Chief Information Officer; the Bureau of Alcohol, Tobacco, Firearms and Explosives; the Drug Enforcement Administration; and the U.S. Marshals Service. “The Internet has given us amazing new tools that help us work, communicate and participate in our economy, but these tools can also be exploited by criminals, terrorists, and enemy governments,” Sessions said in a statement. The attorney general asked the task force to prioritize its study on: efforts to interfere with U.S. elections; efforts to interfere with critical infrastructure; the use of the Internet to spread violent ideologies and to recruit followers; the mass theft of corporate, governmental, and private information; the use of technology to avoid or frustrate law enforcement; and the mass exploitation of computers and other digital devices to attack American citizens and businesses. The task force will be responsible for issuing a report to the attorney general by the end of June.

CHILDREN’S HEALTH: After several months of failure to reauthorize the Children’s Health Insurance Program (CHIP), Congress passed a six-year CHIP reauthorization as part of negotiations to end a government shutdown in January. The reauthorization is part of P.L. 115-120 (H.R. 195), a fiscal year 2018 continuing appropriations bill signed by President Trump on Jan. 22. The ABA, which has long supported CHIP, encourages the provision of comprehensive health care for children. The program’s authorization had expired on Sept. 30, 2017, and states were struggling to continue to provide health care to eligible low-income children. On Dec. 18, before CHIP was reauthorized, the ABA sent a letter urging Senate and House leaders to pass an immediate long-term extension of funding for the program. ABA Governmental Affairs Director Thomas M. Susman emphasized in the letter that about 8.9 million children rely on CHIP. Many of the children who stood to lose the protection of CHIP would likely have no other affordable coverage option available to them, he wrote, because these children are in working families whose parents earn too much to qualify for Medicaid but too little to purchase private insurance. “The resulting increase in the rate of uninsured children would be an enormous step backwards,” he emphasized.

EMPOWER CARE ACT: The ABA affirmed its support Feb. 21 for S. 2777, the EMPOWER Care Act, a bill that would extend the “Money Follows the Person” rebalancing demonstration grant program (MFP) through 2022. MFP was first authorized in 2005 and extended through September 2017 by the 2010 Affordable Care Act. In a letter to Senate Finance Committee Chairman Orrin Hatch (R-Utah) and Ranking Member Ron Wyden (D-Ore.), ABA Governmental Affairs Director Thomas M. Susman explained that MFP helps transition seniors and persons with disabilities from institutional settings back into the community. “By favoring community-based services, states save money and see better outcomes for their residents,” Susman explained. “That’s why nearly every state participates in the program.” Studies have shown that the program reduces Medicaid and Medicare expenditures by approximately 23 percent, with average per-beneficiary expenditures declining by $1,840 per month. As a result of the lapse in funding, states are running out of money for the program, and the number of people who transitioned back to the community declined for the first time since MFP was first authorized. The ABA supports governmental efforts to expand the availability of home and community-based services, including initiating and expanding other such efforts to help persons with disabilities live with dignity in the community.
ABA President Hilarie Bass expressed concerns to the Senate Judiciary Committee this month about key provisions in legislation that, while intended to fight money laundering, would undermine the attorney-client privilege and impose burdensome and intrusive regulations on many small businesses, their lawyers, and the states.

In a Feb. 1 letter for the record of a Feb. 6 Senate Judiciary Committee hearing on “Beneficial Ownership: Fighting Illicit International Financing Networks Through Transparency,” Bass expressed the ABA’s opposition to S. 1454, which was introduced by Sen. Sheldon Whitehouse (D-R.I.). Bass also emphasized that there are other more effective actions that the ABA and others are taking to fight money laundering in ways that avoid the negative consequences of the legislation.

Under the bill, known as the True Incorporation Transparency for Law Enforcement (TITLE) Act, law firms that help clients form small corporations or limited liability companies (LLCs) would be considered “formation agents” and thus regulated as “financial institutions” under the Bank Secrecy Act. As a result, the law firms would be subject to the strict anti-money laundering (AML) and suspicious activity reporting (SAR) requirements of the act and would be required to submit confidential client information to the government, except when they use “paid formation agents.” However, this limited exemption is flawed, Bass said, because it requires lawyers to outsource important practice-of-law activities to non-lawyers who are often not legally authorized to perform these legal services.

“Such aggressive reporting requirements may be appropriate for banks or certain other financial institutions, but requiring lawyers to report confidential client information to the government under penalty of harsh civil and criminal sanctions is plainly inconsistent with the ethical duties and obligations established by the state supreme courts that license, regulate, and discipline lawyers,” Bass wrote.

Other provisions in the bill, she explained, would impose burdensome, costly and unworkable new regulatory burdens on legitimate businesses and states by requiring all states to obtain beneficial ownership information about corporations and LLCs from those creating these entities, keep the information current, and make it available to law enforcement authorities. Under the provisions, many lawyers helping these small business clients to create new companies would be deemed to be “formation agents” and subject to the reporting requirements, despite the partial lawyer exemption contained in another part of the legislation.

Bass emphasized that the beneficial ownership reporting requirements are unnecessary because the Internal Revenue Service and financial institutions already collect – or will soon be collecting – useful entity-related information needed to fight money laundering and terrorist financing and that information is currently available to law enforcement. In addition, the ABA developed and is actively promoting the “Voluntary Good Practices Guidance for Lawyers to Detect and Combat Money Laundering and Terrorist Financing” to help lawyers fight these illicit activities while still complying with their existing court-imposed ethical duties and other legal obligations. The ABA, the International Bar Association and the Council of Bars and Law Societies of Europe also jointly published the “Lawyer’s Guide to Detecting and Combating Money Laundering,” which provides practical tips to assist lawyers around the world.

In addition to submitting the letter for the Senate Judiciary Committee hearing, Bass submitted a separate letter to the House Financial Services Committee last November opposing a similar House draft bill that was the subject of a hearing held by the committee. S. 1454 and the House bill are updated versions of legislation that was introduced during each of the past several Congresses.

During the Senate hearing, Brian O’Shea, testifying on behalf of the

see “Money laundering,” page 9
CBP addresses ABA concerns in revised standards for borders searches of lawyer’s electronic devices

In response to concerns raised by the ABA last year, U.S. Customs and Border Protection (CBP) issued a revised Directive on Border Search of Electronic Devices on Jan. 4 that adopted several key ABA-requested reforms.

The ABA contacted the Department of Homeland Security (DHS) in May 2017 about standards that permitted CBP and Immigration and Customs Enforcement (ICE) officers to search and review the content of lawyers’ laptop computers, cell phones, tablets and other electronic devices at U.S. border crossings without any showing of reasonable suspicion. These devices typically contain client information that is inherently privileged or otherwise confidential. The correspondence was followed by a meeting between ABA representatives and senior DHS officials last June.

Consistent with the ABA’s recommendations, Section 5.2 of the new CBP policy includes several useful clarifications and new procedures to protect privileged and work product protected client information on lawyers’ electronic devices. In particular, the new CBP policy:

- requires border officers to consult with CBP senior counsels before searching any electronic devices allegedly containing privileged or work product protected material;
- requires border officers and counsels to seek clarification from the individual asserting the privilege as to the specific files, file types, attorney or client names, or other specifics that may assist CBP in identifying and protecting the privileged information;
- requires CBP to segregate the privileged materials from the other information on the device and ensure that the privileged materials are handled appropriately; and
- provides that any copies of privileged materials maintained by CBP must be destroyed at the end of the review process (unless they indicate an imminent threat to homeland security or copies are needed to comply with a litigation hold or other requirement of law).

The new search policy also clarifies that CBP officers may only search the information stored on an electronic device and prohibits them from accessing information that is only stored remotely, such as in the cloud; authorizes CBP officers to ask the traveler for the passcodes or other means needed to access information on the electronic device, but requires the passcodes or other means of access to be destroyed when the search is completed; and clarifies that while a CBP officer may conduct a “basic search” with or without suspicion, an “advanced search” (defined as connecting the device to external equipment to review, copy, and/or analyze its contents) may only be performed if there is reasonable suspicion of unlawful activity or a national security concern.

ABA President Hilarie Bass announced the revised standard to law firm partners and general counsels through her “PartnerUp” campaign, a regular email communication program designed to keep law firms better informed about the association’s advocacy efforts. In her Jan. 12 communication, Bass explained that “while not all of our proposals were adopted, and more clearly needs to be done, the new directive includes several new protections for privileged and confidential client information…and is a clear improvement over the prior policy.”

In addition, the ABA Center for Professional Responsibility issued an advisory paper on Jan. 10 explaining the new CBP policy to those planning to attend the ABA Mid-Year Meeting held this month in Vancouver, British Columbia, Canada. The advisory also summarized the principal rules in the ABA Model Rules of Professional Conduct that lawyers should consider when crossing the border with electronic devices containing confidential client information and noted several protective measures they may wish to take before traveling to the Vancouver meeting.

Previously, the New York City Bar issued Formal Opinion 2017-2 last July that expressed its views on lawyers’ ethical duties to protect client confidentiality during U.S. border searches of the lawyers’ electronic devices.

To further explore this issue and the broader subject of warrantless searches of travelers’ electronic devices at the U.S. border in general, the ABA Criminal Justice Section has established a Task Force on Border Searches of Electronic Devices. The section’s task force plans to develop a possible White Paper, ABA policy proposals, or other materials in an effort to protect the legal rights of lawyers, clients, and other travelers crossing the U.S. border with electronic devices.

Anti-money laundering

continued from page 8

U.S. Chamber of Commerce, echoed many of the ABA’s concerns about the legislation. He said the current version of S. 1454 “does not include any fundamental changes that mitigate our serious longstanding concerns over this vast expansion of government authority that would add unnecessary costs and burden to small and medium-sized businesses.” He concluded that the legislation would have “far more harmful consequences for the ability of small businesses to provide job creation and economic growth than it would on illicit actors seeking to us harm.”

In addition to the ABA and the U.S. Chamber, other groups opposing the legislation include the National Association of Criminal Defense Lawyers, National Association of Secretaries of State, National Federation of Independent Business, National Association of Manufacturers, and The Real Estate Roundtable.
The future remains uncertain for participants in the Deferred Action on Childhood Arrivals (DACA) program after Congress and the Trump administration failed this month to reach an agreement to extend the program.

Even though President Trump announced in September 2017 that DACA would end March 5, federal judges in California and New York have blocked that action. Both judges ruled that the president’s decision to terminate the program, which was established in 2012 by President Obama through executive action, was flawed. The court rulings require the Department of Homeland Security to continue to process DACA renewal requests as the cases move through the courts. On Feb. 26, the Supreme Court declined the administration’s request for expedited review of the issue.

Nearly 800,000 undocumented individuals who were brought to the United States as children have participated in the program, which protects from deportation those who meet stringent criteria.

Taking up the issue this month, the Senate failed to pass two bipartisan measures and a proposal offered by the president, who demanded that other provisions be included in the legislation that would limit legal immigration and provide funding for a wall on the U.S.-Mexico border.

When the president made his announcement in September, ABA President Hilarie Bass urged Congress to act swiftly to pass legislation that provides a “fair, orderly and safe way ahead for the young people affected by this change.”

The ABA reinforced its position supporting the DACA participants – known as Dreamers – when the House of Delegates adopted a resolution Feb. 5 during the February Mid-year Meeting that urges Congress to enact legislation to protect DACA recipients and other undocumented immigrants who were brought to the United States as children.

Criminal justice

continued from front page

Even though the legislation has bipartisan support in the Senate, S. 1917 faces an uphill battle going forward. A letter sent to Grassley on Feb. 14 by Attorney General Jeff Sessions expressed the administration’s strong opposition to the comprehensive bill, writing that passing the bill would be a “grave error.”

During markup, the committee rejected, by a 5-16 vote, an amendment offered by Sen. Ted Cruz (R-Texas) to include language that he said would ensure that violent criminals would not be eligible for retroactive lowering of their sentences. Although no other amendments were offered, Sen. Orrin Hatch (R-Utah) said he could not support the bill because it did not include mens rea (criminal intent) provisions, and Sen. John Cornyn (R-Texas) spoke in favor of a narrower approach included in S.1994, a bill he introduced that focuses on correction and prison reform.

Grassley emphasized, despite the obstacles, the importance of the legislation.

“The reforms in this bill are not only supported by a broad, bipartisan swath of the U.S. Senate, they are also popular among Americans of all stripes and political views. This is a rare opportunity to enact meaningful reforms on a bipartisan basis, reforms that have proven elusive for previous administrations,” Grassley said.