Senate Judiciary Committee approves Second Chance Act reauthorization

The Senate Judiciary Committee approved legislation July 21 to reauthorize the Second Chance Act, which provides resources for coordinating reentry services and policies for former inmates trying to successfully return to their communities.

The bill, S. 1231, would authorize $115 million for the act’s grant program in fiscal year 2012 and gradually increase the annual authorization amount to $155 million by fiscal year 2016. Programs funded by Second Chance Act grants at the state, tribal and local levels include demonstration projects, reentry courts, family-centered activities, substance abuse treatment, employment counseling, mentoring and other services needed to improve transition from prison and jail to communities.

The ABA believes that the Second Chance Act, originally enacted in 2008 with strong bipartisan support, provides “crucial resources at a time when they are desperately needed” and is a “common sense, evidence-based approach to reducing recidivism and improving public safety.” In a July 12 letter supporting the committee’s approval of the bill, ABA Governmental Affairs Director Thomas M. Susman explained that reauthorization of the act is a critical opportunity for a modest investment in “back-end” crime prevention that represents a tiny fraction of federal spending on the criminal justice system.

Susman noted that more than 9 million individuals are released from jail each year, and research indicates that more than half are reincarcerated within three years of release. He said that research also confirms, however, that comprehensive coordinated services can help formerly incarcerated individuals find stable employment and housing, thereby reducing recidivism.

Susman expressed ABA support for provisions that would help offset federal spending on reentry programs while addressing the dangerous overcrowding within the Bureau of Prisons. The provisions recalculate time credits for a prisoners’ good behavior in a manner that conforms with federal law requiring prisoners to serve at least 85 percent of their sentences.

Committee Chairman Patrick J. Leahy (D-Vt.) emphasized that the bill takes “important new steps to ensure that people coming out of prison do not simply return to a life of crime.”
### ABA LEGISLATIVE BOXSCORE

<table>
<thead>
<tr>
<th>Independence of the Legal Profession. P.L. 111-219 (S. 3987)</th>
<th>HOUSE</th>
<th>SENATE</th>
<th>FINAL</th>
<th>ABA POSITION</th>
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<tr>
<td>clarifies that lawyers are not “creditors” under the Fair and Accurate Credit Transactions Act of 2003. The ABA scored a victory in a lawsuit against the FTC regarding application of the act to lawyers when the circuit court dismissed an FTC appeal and declared the case moot. The Securities and Exchange Commission issued final whistleblower rules under the Dodd-Frank Wall Street Reform and Consumer Protection Act that recognize the importance of protecting the attorney-client privilege and the confidential lawyer-client relationship.</td>
<td>House passed H.R. 2 on 1/19/11. Judiciary Cmte. held a hearing on H.R. 5 on 1/20/11 and approved the bill on 2/16/11.</td>
<td>Senate rejected health care repeal amendment to S. 223 on 2/2/11. S. 218 was referred to the Judiciary Committee on 2/27/11.</td>
<td>President signed P.L. 111-219 (H.R. 3987) on 12/18/10.</td>
<td>Opposes the application of the FTC’s “Red Flags Rule” to lawyers. Supports preservation of the attorney-client privilege and work product doctrine and opposes governmental policies, practices and procedures that erode these protections, including the routine practice by government officials of seeking to obtain a waiver of the attorney-client privilege or work product doctrine through the granting or denial of any benefit or advantage.</td>
</tr>
</tbody>
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| Health Care Law. P.L. 111-148 (H.R. 3590), the Patient Protection and Affordable Care Act, and P.L. 111-152 (H.R. 4872), the Health Care and Education Reconciliation Act, overhaul the nation’s health care system. H.R. 2 would repeal health care reform law. An amendment proposed to S. 223, transportation legislation, would have repealed the law. H.R. 5 and S. 218 would preempt state medical liability laws. | H.R. 727 was referred to the Judiciary Cmte. on 2/15/11. H.R. 1416 was referred to the Ways and Means Committee on 4/7/11. | S. 348 was referred to the Judiciary Cmte. on 2/15/11. S. 755 was referred to the Finance Committee on 4/7/11. Judiciary Cmte. approved S. 410 on 4/7/11. | President signed P.L. 111-148 (H.R. 3590) on 3/23/10 and P.L. 111-152 (H.R. 4872) on 3/30/10. | Supports increased access to health care for all Americans. Opposes federal legislation to preempt state medical liability laws or legislation to require patients injured by malpractice to use “health courts” that take away jury trials. |


| Legal Services Corporation. P.L. 112-10 (H.R. 1473), continuing appropriations for fiscal year 2011, includes $404.2 million for the LSC. The president requested $450 million for the program in his fiscal year 2012 proposed budget. The House Appropriations Committee approved $300 million for fiscal year 2012. | | | | Supports an independent, well-funded LSC. |
The United States will continue to lead the world in recidivism rates if the substantial barriers to employment of ex-offenders are not addressed, ABA witness Stephen Saltzburg told the Equal Employment Opportunity Commission (EEOC) during a July 26 commission meeting.

“Collateral consequences of conviction contribute to the criminal justice system’s reentry challenges,” Saltzburg told the commission, which is holding a series of meetings on the implications of various hiring practices. “While the ABA supports reasonable restrictions on former offenders holding certain jobs where their records would raise genuine issues of public safety, not all collateral employment restrictions resulting from conviction are fair or effective,” he emphasized.

In some instances, Saltzburg explained, collateral bars on employment prevent someone who has been trained by the government at taxpayer expense from taking the very job for which he or she has been trained – which makes no sense at all.” Examples include statutes in every state and the federal code that disqualify people from jobs and licenses based on a criminal record and sweeping policies adopted by some private employers against employing anyone with a criminal record, including those who were arrested but never convicted.

The Criminal Justice Section currently is working on a research project funded by the National Institute of Justice to develop a state-by-state database of all collateral consequences of convictions that exist nationwide. So far, the Collateral Consequences of Conviction Project has uncovered more than 38,000 statutes containing a collateral consequence, indicating that “employment-related collateral sanctions are widespread and pervasive,” Saltzburg said.

Other work by the ABA in this area include a 2009 project studying federal statutes and regulations as well as the comprehensive national examination of federal and state justice policies conducted in 2003 by the ABA Justice Kennedy Commission. The Commission on Effective Criminal Sanctions expanded on the work of the Justice Kennedy Commission, making numerous recommendations that include opposing automatic barriers to employment and favoring discretionary factors that should be applied on a case-by-case basis.

In his testimony, Saltzburg also recommended legislation to improve the inaccurate federal database used by private and public employers to perform background checks on potential employees.

Also appearing before the commission was Amy Solomon, senior advisor to the assistant attorney general of the Justice Department’s Office of Justice Programs. Solomon heads the Reentry Council, a Cabinet-level interagency group convened by Attorney General Eric Holder to examine all aspects of reentry of individuals with criminal records.

“If we want people with past criminal involvement to be able to support themselves, support their families, pay their taxes, and contribute to their communities and the economy, they need to be able to compete for legitimate work opportunities,” she concluded.

Second Chance Act

The committee’s 10-7 vote approving S. 1231 came after members amended the bill to exclude certain prisoners from participating in the reentry programs. As amended by the committee, the legislation would extend programs only to prisoners who were not convicted of a felony, sex offense or crime committed with a deadly weapon. An additional amendment extended the restriction to exclude those convicted of a violent felony, rape, sex offense against a minor, or a drug offense involving a deadly weapon.
ABA Washington Letter

ABA supports DREAM Act

ABA President Stephen N. Zack expressed the association’s support last month for the Development, Relief and Education for Alien Minors Act (DREAM Act), which would provide a path to legal residence and citizenship for certain young immigrants.

Zack submitted his statement on the bill, S. 952, for the record of a hearing held June 28 by the Senate Judiciary Subcommittee on Immigration, Refugees and Border Security.

He emphasized that the argument at the heart of the issue is that young people brought into the United States as children by family members, through no choice of their own, should be allowed to stay.

“But for a twist of fate,” he said, “their story would be my story. These young people deserve the same chance to pursue the American dream and this legislation will enable them to do so.”

Those eligible under the legislation include undocumented youths who entered the United States before the age of 15, are 35 years or younger on the date the bill is enacted, and enroll in college or join the military. Conditional legal status would be granted only to applicants who successfully complete a criminal background check, demonstrate good moral character, and complete two years of college or military service. After six years, applicants would be eligible for lawful permanent resident status if they have maintained good behavior and are able to meet additional criteria.

In his statement, Zack underscored that “earn is the key word in this case,” and that, contrary to criti-
Support aired on Hill for Veterans Treatment Courts

Witnesses appearing before a Senate Judiciary subcommittee July 19 expressed support for Veterans Treatment Courts, which offer structured intervention, treatment and integrated service for veterans in the criminal justice system who often are struggling with the effects of trauma from their prior military service.

Benjamin B. Tucker, deputy director for the Office of State, Local and Tribal Affairs in the Office of National Drug Control Policy, told the Subcommittee on Crime and Terrorism that the success of the nation’s more than 2,500 drug courts led to development of Veterans Treatment Courts, which now number 75 nationwide and show great promise.

Tucker explained that Veterans Treatment Courts, like drug courts, combine rigorous treatment and personal accountability, but they also incorporate the unique capabilities and services of the Department of Veterans Affairs (VA), health networks, the Veterans Benefits Administration, state departments of veterans affairs, volunteer veteran mentors, and veterans family support organizations.

The Veterans Treatment Courts work with these veteran-oriented agencies and organizations to connect court participants to treatment, benefits and support services for which they are eligible as veterans. Such services include substance abuse treatment, medical and disability benefits, home loans, and other services intended to help the veterans return home successfully.

Last year, the Obama administration launched an initiative that has trained 21 court teams since last fall. The training curriculum was developed by the Bureau of Justice Assistance, the VA, the National Drug Court Institute, and numerous Veterans Treatment Courts professionals.

Jeanne E. LaFazia, chief judge of the Rhode Island District Court, testified about the success of a pilot Veterans’ Court program in Rhode Island that she hopes will lead to a statewide Veterans’ Court in Rhode Island in the future. The expansion, she said, will allow the courts to fully address the various needs of returning military and allow the courts to include all individuals who enter the judicial system because of a service-related injury.

The ABA has a long history of supporting initiatives and legislation to help vulnerable individuals. In the past, the association has adopted policy supporting various types of specialized courts, including drug courts, unified children and family courts, and homeless courts for veterans. The ABA also has been working with the VA and other organizations – including the National Association of Drug Court Professionals, AmeriCorps and Equal Justice Works – to promote pro bono legal services for homeless veterans where possible.

Building on the homeless veterans court policy adopted in 1990, the ABA approved policy in 2010 to help guide jurisdictions exploring the creation of Veterans’ Treatment Courts.

According to the ABA, veterans returning from the wars in Afghanistan and Iraq are manifesting unprecedented levels of post traumatic stress syndrome (PTSD) and are at a higher risk of homelessness or criminalization when faced with mental illness, physical disability, weak social structures and poverty.

“The time has never been more critical to provide a safety net for veterans who have put themselves in harm’s way to protect our liberty in avoiding the predictable poor outcomes that these factors pose, and we need to develop innovative strategies to help veterans transition back to the community to be successful,” according to the report accompanying the association’s policy.

Senate committee reviews impact of VAWA

The Senate Judiciary Committee held a hearing July 13 to assess what has been accomplished in the past 17 years by the Violence Against Women Act (VAWA) as the committee begins consideration of the act’s reauthorization.

Committee Chairman Patrick J. Leahy (D-Vt.) emphasized that since 1994 the bipartisan VAWA has been the “centerpiece of the federal government’s commitment to combating domestic violence, sexual assault and other violence crimes against women.” Leahy noted that the law has provided legal remedies, social support and coordinated community responses to the complex issues of domestic and dating violence, sexual assault, and stalking. The rate of domestic violence has declined, he said, but the country still has a long way to go. He pointed out that each year 1.3 million women are victims of physical assault by a partner and one in six women and one in 33 men are victims of sexual assault. One in 12 women and one in 45 men have been stalked in their lifetimes.

Leahy said that access to support services must be increased, especially in rural communities and among older Americans. Also crucial, he indicated is addressing high rates of violence experienced by Native Americans and immigrant women.

Jane A. Van Buren, executive director of Women Helping Battered
ABA urges greater effort to fill judicial vacancies

ABA President Stephen N. Zack urged Senate Majority Leader Harry Reid (D-Nev.) and Minority Leader Mitch McConnell (D-Ky.) last month to redouble their efforts to fill existing judicial vacancies quickly.

In a July 28 letter to the Senate leaders, Zack emphasized that, despite good intentions and modest progress this Congress in filling vacancies, there has been no significant reduction in the vacancy rate.

Since the 112th Congress began in January, President Obama has made 90 nominations, the Senate has regularly scheduled up-or-down votes, and 31 nominations have been confirmed. The vacancy rate, however, remains at 10 percent, with 38 of the current 90 vacancies declared judicial emergencies by the Administrative Office of the U.S. Courts because they have existed so long and have created untenable workloads for the remaining judges on the courts where the vacancies exist.

“As lawyers who practice in federal courts across this nation, ABA members know firsthand that long-standing vacancies on courts with staggering caseloads impede access to the courts and create strains that will inevitably reduce the quality of our justice system and erode public confidence in the ability of the courts to vindicate constitutional rights or render fair and timely decisions,” Zack wrote.

He acknowledged that the aging of the federal judiciary is contributing to the growing vacancy crisis. According to Department of Justice estimates, 60 new vacancies will be created through attrition each year for the next decade.

An obvious starting point to expediting the confirmation process and a step that would reduce the vacancy rate to 8 percent, Zack said, is for Senate leaders to schedule immediate up-or-down votes before the August recess for the 20 nominees awaiting floor action who were approved by the Senate Judiciary Committee with no recorded opposition.

He emphasized that long-term permanent progress will require more than this one-time fix and urged the president and the Senate “to act with common purpose” through this Congress to fill judicial vacancies promptly.

ABA urges greater effort to fill judicial vacancies

Judicial Vacancies/Confirmations — 112th Congress* (as of 8/2/11)

<table>
<thead>
<tr>
<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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<td>0</td>
<td>0</td>
</tr>
<tr>
<td>US Courts of Appeals (179 judgeships)</td>
<td>17</td>
<td>10</td>
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</tr>
<tr>
<td>US District Courts (678 judgeships)</td>
<td>72</td>
<td>48</td>
<td>28</td>
</tr>
<tr>
<td>Court of International Trade (9 judgeships)</td>
<td>1</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Totals</td>
<td>90</td>
<td>58</td>
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*Includes territorial judgeships
WASHINGTON NEWS BRIEFS

NATIONAL FLOOD INSURANCE: The House passed a bill July 19 to reauthorize the National Flood Insurance Program (NFIP) for five years. The program, originally established in 1968 and extended 10 times for short periods since 2008, is now set to expire Sept. 30. The NFIP provides insurance for an estimated 5.5 million homes and businesses but has been financially strained in recent years after several severe hurricanes and flooding. The House-passed bill, H.R. 1309, would overhaul the program by reducing rate subsidies, improving flood mapping, and requiring a study by the Federal Emergency Management Agency on ways to incorporate private insurance into the programs. The ABA, in policy adopted in August 2009, urges Congress to consider ways to strengthen the insurance financial infrastructure to deal with natural catastrophes through programs that include availability of affordable insurance in areas highly exposed to catastrophes without competing with the private markets. The policy, which supports NFIP reauthorization, cites specific changes that should be made in the program to put it on a sound actuarial basis. The legislation now goes to the Senate for consideration.

OLDER AMERICANS: The American Bar Association, in collaboration with 15 other elder rights organizations, conveyed four consensus recommendations to the Administration on Aging (AoA) last month for consideration during reauthorization of the Older Americans Act this year. In a July 12 letter to Kathy Greenlee, who heads the AoA as the assistant secretary for aging at the Department of Health and Human Services, and Edwin Walker, the AoA deputy assistant secretary for program operations, ABA Governmental Affairs Director Thomas M. Susman wrote that OAA reauthorization “presents an opportunity to utilize the lessons we have learned from more than three decades of experience in supporting legal assistance under the act.” The consensus recommendations focus on the provision of legal services under the act and focus on the following needs: effectively targeting scarce OAA legal and elder rights resources to the most needy older persons who are least able to advocate on their own behalf and to give priority to the most critical legal needs, including protecting and enhancing income, housing, access to health care, and other rights and benefits essential to meeting basic needs; developing and maintaining high-quality, high-impact targeted legal assistance and elder rights delivery systems that give priority to legal issues that reflect the most critical needs of target groups, that coordinate the various legal resources for maximum impact and cost efficiency, and that are an integral part of the broad aging service network; strengthening state legal assistance developers, who are responsible for developing and coordinating each state’s legal services and elder rights programs; and ensuring an adequate level of funding. In addition to the four collaborative recommendations, the ABA is urging Congress to make other changes in the law, including a major structural change in the way legal services are funded under the act. Funding decisions, according to the ABA, should be elevated from the area agencies on aging to the state level to create a high-quality coordinated state legal services delivery system.

ABA ANNUAL MEETING

August 4-9, 2011
Toronto, Canada
VAWA is up for reauthorization this year

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Women Inc., testified that support from VAWA programs has allowed her group to build a strong response to domestic violence in Chittenden County, Vermont. Comprehensive services her organization has been able to provide include support and counseling for children exposed to and affected by violence, transitional and short-term emergency housing, legal advocacy and collaboration with law enforcement, employment and job readiness training, credit counseling and repair, crisis intervention, safety planning, and extensive public education and training.

“The safety net VAWA has provided survivors over the years is now a lifeline for many,” Van Buren said. She noted, however, that while a 2010 census by the National Network to End Domestic Violence found that in just one day more than 70,600 adults and children were served by local domestic violence programs, more than 9,500 requests for services went unmet.

A recent Government Accountability Office (GAO) report showing gaps on national data collection on domestic violence was presented to the committee by Eileen R. Larence, director of homeland security and justice at GAO. The gaps resulted from challenges in collecting and reporting data on the demographic characteristics of victims receiving services under the act. Concerns include victim’s confidentiality and safety, resources constraints, the overburdening of recipients, and technological issues. Larence indicated in the report that efforts are underway at the Department of Health and Human Services and the Department of Justice to address the gaps to provide better and more complete data during the reauthorization process.

The ABA, which supports VAWA reauthorization, has a particular interest in Title I of the bill, which addresses the justice system’s response to domestic violence. The association supports a continued focus on training for judges and court personnel and support for the legal assistance and STOP grant programs, which provide funding for civil and criminal legal services for victims of domestic violence.

DREAM Act supported by ABA

continued from page 4

cism from the bill’s opponents, “the DREAM Act would not automatically grant legal status to anyone.”

The June 28 hearing included testimony from Education Secretary Arne Duncan, Homeland Security Secretary Janet Napolitano, and Under Secretary of Defense Clifford Stanley, who emphasized the positive effects the bill’s passage would have on their respective agencies and its overall benefits to the nation’s economy and national security.

In her testimony, Napolitano stated that her major reason for urging Congress to pass the DREAM Act is “to allow the department to devote a greater portion of limited DHS resources to removing individuals who actually pose a risk to public safety or security.”

The ABA has strongly supported passage of the DREAM Act since 2006 and continues to support comprehensive immigration reform that realistically and humanely addresses the undocumented population, enhances border security and preserves traditions of fairness and due process for everyone in the United States.

Various versions of the DREAM Act have been introduced and considered in Congress over the past 10 years, but none have passed. The Obama administration strongly supports passage of the bill as a key component of its overall national security and immigration reform agenda. The administration has also stressed a number of spill-over benefits that would emerge with passage of the legislation, including a strengthening of the military’s recruitment and readiness efforts and an improvement in the nation’s competitiveness in the global economy that would accompany a higher proportion of the population pursuing higher education.

The monthly Washington Letter reports news of national public interest to the legal profession, including congressional, executive branch and ABA activities concerning the association’s legislative priorities. The newsletter is published by the Governmental Affairs Office as a service to ABA members and national, state and local bar associations. Full text is available on the Internet at http://www.americanbar.org/advocacy/governmental_legislative_work/publications.html. © 2011 American Bar Association. All rights reserved. Please address correspondence to:


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