

LEGISLATIVE UPDATE: August 2008

Justice Integrity Act/ Racial Disparities

Senator Joseph R. Biden, Jr. (D-DE), Chairman of the Senate Judiciary Subcommittee on Crime and Drugs, along with Senators Arlen Specter (R-PA), Benjamin L. Cardin (D-MD) and John F. Kerry (D-MA), introduced on July 10, 2008, S. 3245, the Justice Integrity Act, legislation designed to increase public confidence in the justice system and address any unwarranted racial and ethnic disparities in the criminal process. A House companion bill was introduced by Representative Steve Cohen (D-TN) on July 16, 2008. The Justice Integrity Act would establish advisory groups in federal districts under the supervision of the United States Attorney General, to study and determine the extent of racial and ethnic disparity in the various stages of the criminal justice system; make public reports on the results of their findings; and make specific recommendations to help to eliminate racial and ethnic discrimination and unjustified racial and ethnic disparities.

The Justice Integrity Act establishes a pilot program within the Justice Department to identify and eliminate unjustified disparities in the administration of justice. The program calls for:

- Ten U.S. Attorneys, designated by the Attorney General, are directed to appoint and chair an advisory group, composed of federal and state prosecutors and defenders, private defense counsel, federal and state judges, correctional officers, victims' rights representatives, civil rights organizations, business representatives and faith-based organizations engaged in criminal justice work.
- Each advisory group to systematically gather and examine data regarding the criminal process in its district and seek to determine the causes of any racial or ethnic disparity.
- Produce a report on key findings and recommend a plan to reduce any unwarranted racial and ethnic disparities, and thereby increase public confidence in the criminal justice system.

At the end of the pilot program, the Attorney General will produce a comprehensive report to Congress on the results in all ten districts and recommend best-practices going forward.

A team of ABA CJS volunteers, ABA staff and staff with The Sentencing Project worked with Senator Biden's staff over a period of several months to draft the Justice Integrity Act.

Numerous law enforcement and civil rights organizations have expressed their support for Sen. Biden's legislation.

Juvenile Justice Reauthorization

On July 31, 2008, following adoption of key ABA-supported amendments, the Senate Judiciary Committee on July 31, 2008 approved S. 3155, legislation to reauthorize the federal Juvenile Justice and Delinquency Prevention Act (JJDP), following adoption of key ABA-supported amendments regarding "status offenders" and mental health needs of youth.

The Committee approved an amendment offered by Senator Ben Cardin (D-MD) by an 11-7 vote to change longstanding federal policy toward status offenders, youth who have been found to be

truant, have run away from home, or violated curfew or liquor ordinances. The amendment provides for a phase-out over three years of the Valid Court Order (VCO) exception to the 1974 Act's core requirement that states deinstitutionalize status offenders. The VCO exception was added to the Act in 1980 to give states additional time to develop alternative community resources to jail and secured detention for non-criminal youth offenders. S. 3155 as originally introduced would have stiffened due process protections for youth subject to VCO proceedings but would have continued authorization for states accepting JJDPA grant funding to continue confinement of status offenders in youth detention facilities. States which are unable to end use of VCO confinement in three years may apply for an additional 1-2 year exemption.

The Committee also approved an amendment offered by Senator Dianne Feinstein (D-CA) by an 18-1 vote to authorize grant funds for states to provide mental health screening and assistance and drug abuse treatment. States that apply for the grants would be required to screen juveniles shortly after arriving at a detention facility for mental health or drug abuse issues and provide treatment for those found to be suffering from such problems.

As introduced, S. 3155 would strengthen the JJDPA in a number of important respects, including its Core Requirements to:

- Strengthen the Disproportionate Minority Contact (DMC) requirement. Research has documented that youth of color are disproportionately over-represented and subject to more punitive sanctions at all levels of the juvenile justice system. S. 3155 directs states and localities to plan and implement data-driven approaches to ensure fairness and to reduce racial and ethnic disparities, to set measurable objectives for DMC reduction, and to publicly report on progress.
- Improve the Jail Removal and Sight and Sound core requirements. Research shows that youth confined in adult jails and lock-ups face increased recidivism and high risks of assault and suicide. S. 3155 extends the jail removal and sight and sound core requirements to keep youth awaiting trial in criminal court out of adult lock-ups under certain circumstances. While our ultimate goal is to completely remove these youth from adult facilities, S. 3155 takes a good step in this direction.
- Allow States to continue to place youth convicted in adult courts in juvenile facilities without jeopardizing federal funding. S. 3155 would permit many States to continue allowing youth convicted in adult court to serve their sentence in juvenile facilities until they reach the extended juvenile jurisdiction age. Under current law, States can be penalized for utilizing these more appropriate and humane placements for youth.

Overall juvenile justice system improvements in S. 3155 include provisions to:

- Improve conditions of confinement in juvenile facilities: S.3155 calls for the Administrator of the Office of Juvenile Justice and Delinquency Prevention (OJJDP) to report annually on state data regarding the uses of isolation and restraints in juvenile detention and corrections facilities, and encourages training of facility staff to eliminate dangerous practices. S. 3155 also requires states to develop policies, procedures and training on effective behavior management designed to eliminate use of dangerous practices, unreasonable restraints and isolation.

- Provide comprehensive services and supports for youth: S. 3155 promotes alternatives to detention, improves assessments and treatments for mental health and substance abuse, enhances child welfare and juvenile justice integration, supports effective assistance of counsel, and improves case management and transitional care for youth upon re-entry.
- Create incentive grants: S. 3155 expands evidence based and promising intervention and prevention programs by creating incentive grants. The Senate bill could be further strengthened by an amendment to ensure that programs funded by these grants show evidence-based or promising outcomes of effectiveness.
- Expand the role of OJJDP: S. 3155 provides guidance about specific research, technical assistance and training efforts to be conducted in a manner that benefits States and communities, nationwide.
- Set higher authorization levels for Title II and Title V: S. 3155 provides States with additional resources to achieve and sustain compliance with the core requirements of the JJDPA and take meaningful steps to improve juvenile justice systems and prevent delinquency and violence.

The JJDPA was first enacted in 1974 and was last reauthorized in 2002. Its current statutory authority expired on September 30, 2007. Congressional hearings on reauthorization and amendment of JJDPA began in July with a broad oversight hearing on July 12, 2007, conducted jointly by the House Judiciary Subcommittee on Crime, Terrorism, and Homeland Security, and the House Education and Labor Subcommittee on Healthy Families and Communities. The July 12 hearing testimony is posted online at: <http://judiciary.house.gov/oversight.aspx?ID=350>. The House Education and Labor Committee held a second hearing on September 18, 2007. It is posted at: <http://edlabor.house.gov/hearings/hfc091807.shtml>. The Senate Judiciary Committee held a hearing on reauthorization of JJDPA on December 5, 2007. It is posted at: <http://judiciary.senate.gov/hearing.cfm?id=3043>. Reauthorizing legislation has been in the drafting stage for months and is likely to be introduced in April or May and moved forward by the respective House and Senate Committees before the August recess.

The ABA supports reauthorization of JJDPA, including the state mandates. The mandates are: (1) deinstitutionalization of status offenders; (2) sight and sound separation of juveniles from adult offenders; (3) removal of juveniles from adult jails and lock-ups; and (4) reduction of disproportionate minority contact with the justice system. The ABA also opposes trying juveniles younger than 15 as adults and believes that juvenile court judges should decide after a hearing whether a waiver of juvenile court jurisdiction is appropriate in a particular case. ABA juvenile justice policy is based upon the IJA/ABA Juvenile Justice Standards, which were developed over many years through the contributions of judges, prosecutors, defenders and other juvenile justice professionals and also is based on specific JJDPA policy recommendations adopted in February 1992, August 1995 and August 2007.

Loan Forgiveness

On July 31, 2008, both the House and Senate approved H. Rept. 110-803, the Conference Report to H.R. 4137, the Higher Education Opportunity Act. The House voted 380-49 and the Senate voted 83-8 for final passage. The legislation incorporates respective House and Senate legislation, H.R. 4137, the College Opportunity and Affordability Act, introduced by

Representative George Miller (D-CA), as well as S. 1642, the Higher Education Authorization Act, introduced by Senators Ted Kennedy (D-MA) and Michael Enzi (R-WY).

The legislation includes, among its broad provisions, authorization for four new loan forgiveness programs for public service lawyers:

- The John R. Justice Prosecutors and Defenders Incentive Act, championed by Senators Dick Durbin (D-IL) and Arlen Specter and Representatives David Scott (D-GA), Bobby Scott (D-VA) and Ted Poe (R-TX). This program provides up to \$10,000 per year in loan forgiveness in exchange for a one-time renewable 3-year commitment. The program is authorized for five years and directs the Inspector General to report to Congress in the third year on its progress and effect.
- The Legal Assistance Loan Repayment Program, which was added to the act as an amendment sponsored by Senators Tom Harkin (D-IA) and Ben Cardin (D-MD). The program provides up to \$6,000 per year in loan forgiveness, in exchange for renewable 3-year commitments, up to a maximum of \$40,000 in loan forgiveness. It includes lawyers employed full-time in legal aid provision as well as lawyers working with persons with disabilities. The program gives priority to those with past full-time legal assistance experience and less than three years service in their current office. It will be administered by the Department of Education.
- The Loan Forgiveness for Service in Areas of National Need provides a modest loan forgiveness benefit of up to \$2,000 per year for up to five years for persons who work in qualifying jobs listed under the program, including those who work in “public interest legal services.”
- The Perkins Loan Cancellation for Public Service program will cancel a percentage of outstanding Perkins loan balances for those in identified public service jobs, a list that now includes federal and local defenders. The schedule of cancellation provides 100% loan forgiveness after five years of employed service.

On September 27, 2007, the President signed into law P.L. 110-84, the College Cost Reduction Act, which includes an ABA-advocated loan forgiveness program for public service. Under the program, which became effective October 1, 2007, borrowers may repay their qualifying federal student loans as an affordable percentage of their income, and after 120 payments (10 years), any remaining balance is forgiven by the government. Among the class of professions and employment sectors covered, the Act includes “public interest law services (including prosecutors and public defenders and legal advocacy in low-income communities at a non-profit).” In addition, persons working in “government,” “military,” and at 501(c)(3) organizations are also included. The program became effective October 1, 2007 for some borrowers, does not require a separate appropriations bill, and critical dates over the next two years will progressively expand opportunities for additional persons to enroll.

Drug Sentencing Reform/Crack-Powder Cocaine

By late May 2008, it became apparent that there was not a sufficient consensus among members of the Senate Judiciary Committee to schedule a vote on pending bills to reduce or eliminate the sentencing disparity between crack and powder cocaine offenses. Staff with Senator Joseph Biden, Jr. (D-DE) and the broad coalition working on reform agreed that the issue might best wait until the 111th Congress for further action.

The ABA testified in support of Senate legislation to eliminate the disparity in federal sentencing for crack versus powder cocaine offenses at an important hearing on February 12, 2008, held by the Senate Judiciary Subcommittee on Crime and Drugs. James Felman, Co-Chair of the CJS Sentencing Committee appeared on behalf of the Association along with Judge Ricardo Hinojosa, Chair of the U.S. Sentencing Commission, U.S. District Judge Reggie Walton, on behalf of the Judicial Conference of the United States, Nora Volkov, M.D., Director of the National Institute on Drug Abuse, and U.S. Attorney Gretchen Shappert, representing the Department of Justice. The hearing testimony is posted at the following site: <http://judiciary.senate.gov/hearing.cfm?id=3089>. The House Judiciary Subcommittee on Crime, Terrorism and Homeland Security held a hearing on "Cracked Justice," on legislation to reform federal sentencing for cocaine offenses, on February 26, 2008. The House hearing testimony is posted at this site: <http://judiciary.house.gov/oversight.aspx?ID=416>.

Several bills have been introduced in the 110th Congress to address the federal sentencing disparity for crack versus powder cocaine offenses since the May 2007 recommendations and report of the U.S. Sentencing Commission:

S. 1383, the Drug Sentencing Reform Act of 2007, was introduced on May 14, 2007, by Senator Jeff Sessions (R-AL). Senators John Cornyn (R-TX), Mark Pryor (D-AR) and Ken Salazar (D-CO) are cosponsors. The Sessions bill would raise quantities that trigger mandatory minimum sentences for crack cocaine and lower thresholds for powder cocaine offenses to reach a 20:1 ratio and reduce the penalty for simple possession from 5 to 1 year for many crack offenses.

S. 1685, the Fairness in Drug Sentencing Act, was introduced by Senators Orrin Hatch (R-UT), Ted Kennedy (D-MA), Dianne Feinstein (D-CA), and Arlen Specter (R-PA) on June 25, 2007. Their bill would raise quantity thresholds that trigger mandatory minimum sentences for crack cocaine fivefold while leaving powder triggers at current law levels in order to achieve a 20:1 ratio. S. 1685 would eliminate mandatory minimum sentences for simple possession.

S. 1711, the Drug Sentencing Reform and Cocaine Kingpin Trafficking Act of 2007, was introduced on June 27, 2007 by Senator Joe Biden (D-DE). S. 1711 has added Senators John Kerry (D-MA), Russ Feingold (D-WI), Carl Levin (D-MI), Hillary Clinton (D-NY) and Barack Obama (D-IL) as cosponsors. The Biden bill would raise the crack quantity thresholds by a factor of 100 to reach a 1:1 ratio for cocaine offenses and thereby eliminate the current 100:1 disparity with powder offense quantities. It would also eliminate the mandatory minimum sentence for simple possession offenses. It would recommend sentence enhancements for offenses that involve dangerous weapons or violence and consideration in determining sentence guidelines of the leadership role of the defendant in criminal drug activity. Representative Sheila Jackson-Lee (D-TX) introduced H.R. 4545, the House companion bill to the S.1711, on December 13, 2007. It currently has 42 cosponsors. H.R. 4545 was referred to the House Judiciary Committee for further action.

H.R. 5035, the Fairness in Cocaine Sentencing Act, was introduced on January 17, 2008 by Representative Bobby Scott (D-VA). It would eliminate minimum mandatory penalties for offenses involving cocaine, and use the resulting savings to fund and expand drug courts, and provide drug treatment and diversion programs for cocaine users. H.R. 5035 currently has 26 cosponsors in the House.

Also in the House, Representative Charles Rangel (D-NY) introduced H.R. 460, the Crack-Cocaine Equitable Sentencing Act of 2007, a bill to eliminate the disparity in sentencing policy

for crack versus powder offenses on January 12, 2007. H.R. 460 currently has 24 cosponsors and has been jointly referred to the House Judiciary Subcommittee on Crime, Terrorism, and Homeland Security and to the House Energy and Commerce Subcommittee on Health.

Gang Prevention

Bipartisan legislation intended to deter gang violence was passed by the Senate but has been referred to House committees where it has stalled.

On September 21, 2007, the Senate approved S. 456, the Gang Abatement and Prevention Act, by unanimous consent. Senate passage followed an agreement by sponsors to drop provisions providing from the bill that would have authorized enhanced penalties for firearms-related offenses. Reportedly due to the opposition of the National Rifle Association, the bill had been stalled since June by several “holds” placed by Senators opposed to these provisions. On June 14, 2007 the Senate Judiciary Committee approved a substitute amendment to S. 456, the Gang Abatement and Prevention Act, by a 17-0 bipartisan vote. The substitute version of S. 456 approved by the Committee included new language that tightens the proposed definition of gang membership under the bill and also includes a revised provision requiring that each member of a gang individually commit a gang crime in order to be charged with such a crime, a change sought by several members of the Committee.

Sen. Dianne Feinstein (D-CA) introduced S. 456 on January 31, 2007 in the Senate with bipartisan cosponsors Senators Orrin Hatch (R-UT), Maria Cantwell (D-WA), Jon Kyl (R-AZ), Joe Biden (D-DE), Arlen Specter (R-PA), Chuck Schumer (D-NY) and John Cornyn (R-TX). S. 456 is similar to Senate legislation introduced in the past two Congresses, but was modified to propose new enhanced criminal sentences instead of new mandatory minimum sentences and does not contain any new death penalty provisions as were proposed in predecessor legislation. Sen. Feinstein also dropped proposals from previous bills that would create a presumption in favor of transferring juveniles for trial as adults with regard to a range of gang-related offenses. S. 456 would increase penalties for various street gang-related offenses, expand the scope of predicate crimes for authorization of interception of wire, oral and electronic communications to cover violations relating to criminal street gangs, and authorize the Attorney General to award grants to fund programs to combat gang violence, including \$100 million annually through 2012 for federal, state, and local law enforcement cooperation in “high intensity interstate gang activity” areas, as well as for hiring 94 new assistant U.S. attorneys for assignment to those areas.

Representative Adam Schiff (D-CA) introduced House companion legislation, H.R. 3547 on September 17, 2007, with 25 cosponsors. H.R. 3547 was referred jointly to the House Judiciary Committee and House Education and Labor Committee for further action.

On October 2, 2007, the House Judiciary Subcommittee on Crime, Terrorism and Homeland Security held a hearing on “Gang Crime Prevention and the Need to Foster Innovative Solutions at the Federal Level. The hearing testimony is posted at: <http://judiciary.house.gov/oversight.aspx?ID=378>.

Representative Bobby Scott (D-VA), Chair of the House Judiciary Subcommittee on Crime, Terrorism and Homeland Security introduced an alternative to the S.456/H.R. 3547 anti-gang legislation on October 16, 2007. H.R. 3846, the Youth PROMISE Act, currently has 86 cosponsors and has been referred jointly to the House Judiciary Crime Subcommittee and the House Education and Labor Committee. The Scott bill would provide for evidence-based and

promising practices related to juvenile delinquency and criminal street gang activity prevention and intervention.

Prisoner Reentry: Second Chance Act Signed Into Law

President Bush signed the Second Chance Act into law on April 9, 2008 as Public Law No. 110-199. The successful enactment of the Act resulted from a five year, bipartisan campaign to provide new funding and direction to address recidivism by the large and growing population of offenders exiting prisons in the United States, currently estimated at over 700,000 per year. The Senate passed the Second Chance Act of 2007 by voice vote under a unanimous consent request on March 11, 2008, clearing the measure for the President's signature. In earlier action, on November 13, 2007, the full U.S. House of Representatives approved H.R. 1593, the Second Chance Act of 2007, by a 347 to 62 vote.

The Second Chance Act and its predecessors in two previous Congresses was developed and supported on a broadly bipartisan basis over a five-year period leading to its final passage. The ABA Board of Governors made its passage one of its legislative priorities and the active support of the Criminal Justice Section and the Commission on Effective Criminal Sanctions contributed to a successful lobbying effort in partnership with a broad coalition of criminal justice, corrections, law enforcement and faith-based organizations over these several years.

The Act authorizes assistance to states and localities to develop and implement strategic plans for providing and coordinating comprehensive efforts to enable juvenile and adult ex-offenders to successfully reenter their communities. Such efforts include greater access to supports and services such as: family reunification, job training, education, housing, substance abuse and mental health services. The bill also establishes a federal inter-agency task force on offender reentry, provides for research on reentry, and creates a national resource center to collect and disseminate information on best practices in offender reentry. The legislation will provide grants to states to assist them in reducing crime by improving services and programs for state prisoners reentering communities, reforms to existing barriers in federal law that adversely affect people with both state and federal convictions, and provisions to strengthen federal protections for former prisoners in the areas of employment, housing, and voting. The legislation includes federal programs to provide expanded drug treatment in lieu of prison sentences, residential and family-based drug treatment, and to improve education at prisons, jail, and juvenile facilities.

With its enactment, supporters of the Second Chance Act have turned to seek full funding of the new Act through the FY 09 appropriations process. The Senate Appropriations Committee approved funding at \$20 million and the House Committee approved \$45 million for FY 2009. However, it has become apparent that there will be no final appropriations bills submitted to the President this year. The main effort for appropriations for the Second Chance Act will likely come early next year, perhaps in March 2009.

Federal Sentencing Guidelines

The United States Sentencing Commission (USSC) held a noteworthy symposium on Alternatives to Incarceration on July 14-15, 2008. The ABA urged the USSC in August 2007 to take up the issue of alternatives to incarceration as one of its priority issues in the 2008 amendments cycle.

The Commission on May 1, 2007 submitted to Congress its proposed changes in federal sentencing guidelines for 2007. The amendments package included two issues of great concern

to the Section and the Association: a policy statement to give sentencing courts guidance on granting release to prisoners for extraordinary and compelling reasons and an amendment to improve crack cocaine sentencing. Both amendments went into effect on November 1, 2007.

The sentence reduction amendment adds several criteria to existing guidelines for sentence reduction for prisoners who are not a danger to the safety of any person or to the community. The amendment regarding crack cocaine sentencing modifies the drug quantity thresholds by two levels for sentencing ranges that trigger mandatory minimum penalties. The Commission estimates that 78 percent of crack cocaine offenses will be affected with an average sentence reduction of 16 months.

Following the November 1, 2007 effective date of this amendment, the Sentencing Commission took up the issue of whether to give retroactive effect to the crack sentencing guidelines amendment to offenders currently serving out federal sentences. The Commission held a public hearing on retroactivity on November 13, 2007. Barry Boss, Co-Chair of the Criminal Justice Section Sentencing Committee testified at the hearing on behalf of the Association. The hearing testimony is posted on the Commission website at: http://www.ussc.gov/hearings/11_13_07/AGD11_13_07.HTM

The Sentencing Commission voted unanimously in favor of retroactive application of the crack cocaine sentencing guideline amendment on December 11, 2007. It went into effect on March 3, 2008.

These actions of the Commission, including its issuance of a new report to Congress on crack cocaine sentencing on May 21, 2007, have resulted in increased pressure on Congress to address the underlying federal statute governing crack cocaine sentencing. The 2007 Commission report calls on Congress, as the Commission has two previous times since 1996, to reduce the “unjustifiably harsher” penalties for crack versus powder cocaine offenses.

Mandatory Restitution/Pretrial Restraint of Substitute Assets

The Senate on October 16, 2007 approved a “midnight amendment” to the fiscal 2008 Commerce-Justice-Science (C-J-S) appropriations measure under a unanimous consent request by Senator Brian Dorgan (D-ND) that included far reaching powers for pretrial restraint of substitute (“untainted”) assets in federal criminal cases. This “legislative rider” was based on legislation introduced in March 2007 by Senator Dorgan in the Senate as S. 973, the Restitution for Victims of Crime Act of 2007. There was no comparable House provision or any provision related to federal restitution law in the 2008 House C-J-S appropriation bill, HR. 3093, approved by the full House of Representatives on July 26, 2007.

The ABA and allies urged House leaders to object to inclusion of this provision in final C-J-S appropriations. Sen. Dorgan ultimately agreed not to insist on inclusion of his amendment in the final appropriations legislation after reaching agreement with House leaders that the House should have an opportunity to hold hearings on the Senate-passed provision in the 2008 session before proceeding on any final legislation. The provision was dropped from omnibus spending legislation finalized by Congress in December. The House Judiciary Subcommittee on Crime, Terrorism and Homeland Security held a hearing on April 3, 2008, posted on the Committee website at http://judiciary.house.gov/hearings/hear_040308.html on the Dorgan bill and another restitution bill, H.R. 845, the Criminal Restitution Improvement Act of 2007, introduced by Representative Steve Chabot (R-OH) on February 6, 2007. No further action has occurred.

The Senate Dorgan amendment would permit pretrial restraint of substitute assets for the purpose of satisfying possible restitution judgments, including not only of property shown to be the proceeds of the charged offense or even to have facilitated the offense, but also would allow restraint on a substitute assets theory. Any and all of every defendant's assets could be restrained without any showing of a nexus to the charged offense. The ABA's concerns include that allowing the government to restrain a defendant's assets to pay restitution may in most economic crime cases mean that defendants will be rendered indigent upon indictment and be unable to retain private counsel.

Indigent Defense Funding/CJA

The President's FY 2009 budget recommendation delivered to Congress on February 4, 2008 requests \$911 for federal Defender Services, an increase of \$76 million over the final FY 2008 funding level. The Senate Appropriations Committee approved \$854 million for Defender Services on July 14, 2008, a recommended increase of \$8 million for FY 2009 over current levels as part of H.R. 2829, the Financial Services and General Government appropriations bill for FY 2009. It provides for an increase in the compensation level for panel attorneys in non-capital cases to from \$100 to \$102 as well as the capital panel attorney rate per hour from \$170 to \$174 in FY 2009. The House committee has not yet considered its appropriations recommendations for the next fiscal year.

The House and Senate approved final funding for FY 2008 for federal Defender Services just before the December 2007 holiday recess at \$835.6 million. The final appropriation figure was approved as part of H.R. 2764, the Consolidated Appropriations Act, 2008, P.L. 110-161, omnibus funding legislation finalized and approved by the House and Senate on December 19, 2007. The Act authorized and provided funds to raise the non-capital hourly panel attorney compensation rate from \$94 to \$100, and the maximum hourly capital rate from \$166 to \$170 for federal capital prosecutions and capital post-conviction proceedings.

Prison Litigation Reform Act

At the February 2007 Midyear Meeting of the ABA House of Delegates, a recommendation sponsored by the Criminal Justice Section supporting amendments to the federal Prison Litigation Reform Act (PLRA) was overwhelmingly approved. The recommendation supports amendments, among others, to: repeal the requirement that prisoners suffer a physical injury in order to recover a civil award; modify current requirements for exhaustion of administrative remedies; allow prisoners who prevail on civil rights claims to be awarded attorney's fees on the same basis as the general public; repeal the provisions extending the PLRA to juveniles confined at secured detention and correctional facilities.

Representatives Bobby Scott (D-VA) and John Conyers, Jr. (D-MI) introduced H.R. 4109, the Prison Abuse Remedies Act of 2007, on November 7, 2007. The House Judiciary Subcommittee on Crime, Terrorism and Homeland Security held a hearing on November 8, 2007, on H.R.4109, at which the ABA testified. The hearing testimony is posted at: <http://judiciary.house.gov/hearings.aspx?ID=189>. The House Subcommittee held a second hearing on H.R. 4109 on April 22, 2008. The hearing testimony is posted at: http://judiciary.house.gov/hearings/hear_042208.html. Discussions between key House Judiciary members suggest that there may be a compromise provision reached on the statutory definition of "physical injury" and regarding exhaustion of administrative remedies in the next Congress.

Opportunity for Parole for Youth Offenders

Representative Bobby Scott (D-VA) introduced H.R. 4300, the Juvenile Justice Accountability and Improvement Act of 2007 on December 6, 2007. H.R. 4300 would require states to enact laws and adopt policies to grant child offenders who are under a life sentence a meaningful opportunity for parole at least once during their first 15 years of incarceration and at least once every three years thereafter. H.R. 4300 requires the Attorney General to: (1) establish and implement a system of early release for each child offender who is under a life sentence in a federal prison; and (2) award grants to states to improve legal representation and other services for child defendants charged with an offense carrying a possible sentence of life in prison. H.R. 4300 is cosponsored by Representative John Conyers, Jr. (D-MI) and has been referred to the House Judiciary Subcommittee on Crime, Terrorism and Homeland Security.

False Claims Act Amendments

House and Senate committees moved forward in July on legislation to amend the federal False Claims Act. The House Judiciary Subcommittee on Commercial and Administrative Law and Subcommittee on Courts, the Internet, and Intellectual Property held a joint hearing on June 19, 2008, on H.R.4854, the False Claims Corrections Act of 2007. The hearing testimony is posted on the Judiciary Committee website at this address: http://judiciary.house.gov/hearings/hear_061908.html. The Courts Subcommittee approved H.R. 4854 on July 16, 2008 as amended. H.R.4852 was introduced by Representatives Howard Berman (D-CA), Linda Sanchez (D-CA) and F. James Sensenbrenner (R-WI) on December 19, 2007.

Identical legislation was introduced in the Senate as S.2041 by Senators Chuck Grassley (R-IA), Dick Durbin (D-IL), Patrick Leahy (D-VT), Arlen Specter (R-PA) and Sheldon Whitehouse (D-RI). The Senate Judiciary Committee held a hearing on S.2041 on February 27, 2008, posted at: <http://judiciary.senate.gov/hearing.cfm?id=3161>. The Judiciary Committee approved the bill on April 3, 2008, and then reported S.2041 as amended to reflect the House amendment on July 29, 2008.

The False Claims Correction Act amends the 1863-enacted law to overcome a series of recent judicial decisions that have narrowed its application, by repealing the current requirement that false claims be presented to a government employee and by revising the act to provide that persons who knowingly defraud the government would be liable for a civil penalty of up to \$10,000 and three times the damages sustained because of the fraud. The bill would set a 10-year statute of limitations for lawsuits under federal false claims law.

Byrne Grant Program Reauthorization

Legislation to reauthorize a key state and local law enforcement grant program was signed into law by the President on July 30, 2008 (Public Law No. 110-294) after clearing the House on July 14, 2008, by voice vote. S.231, legislation to reauthorize the Edward Byrne Memorial Justice Assistance Grant Program, was introduced in the Senate on January 9, 2007 by Senator Diane Feinstein. It would reauthorize the Byrne grant program at \$1.1 billion annually through fiscal year 2012. The Bush administration has repeatedly proposed eliminating the program or consolidating it with other anti-crime grant programs at severely reduced funding levels. It is currently funded at \$170 million for fiscal year 2008. The Byrne grants would receive \$581 million in a draft fiscal 2009 Commerce-Justice-Science spending bill approved June 19 by the

Senate Appropriations Committee. The House Appropriations Committee approved \$550 million for Byrne Grants on June 25, 2008.

The Senate passed S.231 without amendment by unanimous consent on May 24, 2007. On July 14, 2008, the House passed S.231 by voice vote under suspension of the rules.

DNA Backlog Grant Program

The House of Representatives passed legislation in July to reauthorize and expand the federal DNA backlog grant program. On July 14, 2008, the House passed H.R.5057, the Debbie Smith Reauthorization Act of 2008 by voice vote under suspension of the rules. H.R.5057 was introduced on January 17, 2008 by Representative Carolyn Maloney (D-NY). It amends the DNA Analysis Backlog Elimination Act of 2000 to authorize appropriations for DNA analysis grant programs under the Act through fiscal year 2014. The DNA grants program was enacted as an amendment to the Act in 2004 focusing on DNA analysis of rape kit samples and on improving investigation and prosecution of sexual assault cases with DNA evidence. H.R. 5057 would authorize \$151 million for fiscal 2009 and \$200 million for each subsequent year through fiscal 2014 for the federal DNA-processing program. It would authorize an additional \$50 million for each of the fiscal years 2009-2013 for grants to state and local government entities to buy forensic DNA technology or to upgrade technology.

At markup sessions held on May 14 and June 11, 2008, the House Judiciary Committee adopted an amendment offered by Representative Adam Schiff (D-CA), by a 19-12 vote, that would increase grants by 10 percent to states that collect DNA from any person arrested for murder, attempted murder, voluntary manslaughter or any sex crime, including misdemeanors. Other amendments adopted by voice vote by the Committee included authorization to provide DNA training grants to law enforcement and forensic examiners, to develop requirements for DNA obtained for criminal prosecution and to include DNA related to missing-persons in the federal database.