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This column is written by the ABA Governmental Affairs Office and discusses advocacy efforts by the ABA relating to issues being addressed by Congress and the executive branch of the federal government.

TITLE: NOT SO FAST: ABA Contends Proposed Habeas Legislation Would Sacrifice Principles for Speed

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Rhonda McMillion is editor of Washington Letter, an ABA Governmental Affairs Office publication.

TEXT:

BILLS IN CONGRESS THAT PROPOSE steps to speed up habeas corpus proceedings in the federal courts are missing the point about what is most important in the process, says the ABA. The association is urging Congress to reject the bills because they fail to recognize the need to provide competent counsel to indigent defendants, particularly in capital cases, and would make it harder for habeas claims to be heard on their merits.

Federal habeas corpus law allows people convicted in state courts to appeal their convictions or sentences to the federal courts if they believe their constitutional rights have been violated, but critics say the process takes too long and lacks finality.

The Senate bill's sponsor, Sen. Jon Kyl, R-Ariz., has said that delays in habeas cases burden the courts, deny justice to defendants who have meritorious claims and are unfair to victims of serious violent crimes.

Both the Senate and House versions of the proposed Streamlined Procedures Act would:

- * Impose new time limits on federal appellate court review of habeas petitions.
- * Prevent federal courts from considering claims that state courts have rejected on procedural grounds.
- * Prevent federal courts in virtually all cases from considering claims regarding a sentence if the state court has asserted that any constitutional error was harmless or not prejudicial.
- * Shift authority from the federal courts to the U.S. attorney general to review decisions about whether state requirements for competent assistance of counsel are adequate to qualify for grants under the 2004 Innocence Protection Act.

PRINCIPLES COME FIRST

IN THE ABA'S VIEW, THE PROPOSED STREAMLINED PROCEDURE Act would undermine principles necessary to achieve justice in habeas cases. First, the government should provide competent counsel to indigent defendants at every phase of the criminal process, says Eric M. Freedman, a law professor at Hofstra University in Hempstead on New York's Long Island and a steering committee member for the ABA Death Penalty Representation Project. Second, he says, federal habeas proceedings should be structured to ensure that claims--whether they maintain a defendant's innocence or allege violations of the procedures mandated by the Constitution to ensure fairness and accuracy--are heard on their merits.

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"The essence of the constitutional difficulty with this bill is that it tells the federal courts to take jurisdiction of cases in order to decide whether previous state court judgments are valid, but then forbids those courts to decide questions of federal law that are crucial to reaching proper results," says Freedman, who testified to the Senate Judiciary Committee on two versions of the current bill.

Freedman says Congress should have empirical evidence of problems with the habeas process before it considers legislation to solve them. The ABA and other opponents of the Streamlined Procedures Act, including the U.S. Judicial Conference and the Conference of Chief Justices, have asked Congress to authorize a study of habeas issues by an independent group to determine the need for legislation.

There has been discussion in Congress about adding some provisions regarding habeas corpus proceedings to legislation reauthorizing the USA Patriot Act, which was expected to be voted on in December, as an alternative to separate legislation addressing habeas issues.

The ABA has opposed limiting habeas review on other fronts as well, including cases involving detainees at Guantanamo Bay in Cuba and people convicted of committing certain crimes against judges or their family members.

GRAPHIC: Photo, Eric Freedman: Congress needs solid evidence of habeas problems before legislating.
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