

October 8, 2021

The Honorable Charles E. Schumer
Majority Leader
United States Senate
Washington, D.C. 20510

The Honorable Mitch McConnell
Minority Leader
United States Senate
Washington, D.C. 20510

RE: ABA Support for Criminal Justice Reform Legislation, H.R. 546, H.R. 1693/S. 79, and S. 998

Dear Majority Leader Schumer and Minority Leader McConnell:

On behalf of the American Bar Association (ABA), the largest voluntary association of lawyers and legal professionals in the world, I urge you to take swift action to enact important criminal justice reforms, and we are encouraged by reports that you may soon take up three bills that target specific corrections and sentencing concerns. It has been nearly three years since the passage of the First Step Act, and with it, the pledge to continue with necessary improvements to the criminal justice system. Therefore, the time has come to act.

Although the ABA has not taken a position on the three bills you intend to bring to the Senate floor this month—namely S. 1014 (the First Step Implementation Act); S. 312 (the COVID-19 Safer Detention Act); and S. 601 (the Prohibiting Punishment of Acquitted Conduct Act)—each addresses important problems in our criminal justice system. However, if the Senate moves forward on those measures in the coming weeks, we urge you to include the following three ABA-supported criminal justice reform bills in any floor package: H.R. 546 (the Effective Assistance of Counsel in the Digital Era Act); S. 79/H.R. 1693 (the EQUAL Act); and S. 998 (the Driving for Opportunity Act).

H.R. 546 seeks to protect the attorney-client privilege and the Sixth Amendment right to counsel by prohibiting the federal government from monitoring email messages between those in prison and their lawyers. The attorney-client privilege is fundamental to our system of justice and critical to the work of lawyers who rely on confidential communications with their clients to represent their interests in legal proceedings and ensure fairness in the federal criminal justice system. Currently, traditional letter mail, unmonitored telephone calls, and in-person meetings between lawyers and their incarcerated clients are protected by the privilege, but email communications are not. H.R. 546 would apply the same attorney-client privilege protections to emails that already apply to all other forms of communication, but the bill would provide the Federal Bureau of Prisons with wide discretion in how to comply with the bill's requirements. H.R. 546 enjoys broad bipartisan support and was passed by House earlier this year by a vote of 414-11. Therefore, we urge you to include this important legislation in any criminal justice reform package considered by the Senate this year.

The second bill we urge you to include in your reform package is S. 79/H.R. 1693, the EQUAL Act, which would finally eliminate any disparity in sentencing for offenses involving crack versus powder cocaine. For more than 25 years, this disparity has been criticized as unwarranted by the [U.S. Sentencing Commission](#) and [the ABA](#). The law was passed to combat drug kingpins and

traffickers at the U.S. border, but a [2007 U.S. Sentencing Commission report](#) revealed that 95% of those serving enhanced sentences for crack-related offenses were American citizens, more than 80% of them were Black, and more than half of the cases involving harsher penalties were for low level offenses. While the disparity was reduced from a ratio of 100-to-1 to 18-to-1 under the [Fair Sentencing Act of 2010](#), there is no basis for distinguishing offenses or sentences based solely on the form of cocaine involved. H.R. 1693, the House companion to S. 79, passed the House last week under suspension of the rules by a vote of 361-66. Therefore, we urge you to include the EQUAL Act in any criminal justice reform package you take up on the Senate floor this month.

The third bill we urge you to include in the reform package is S. 998, the bipartisan Driving for Opportunity Act. Consistent with the [ABA Ten Guidelines on Court Fines and Fees](#), this important legislation would incentivize states to end the self-defeating practice of suspending driver's licenses and car registrations due to unpaid fees and fines. Such suspensions frustrate the ability of people to maintain a job, making it less likely that the fees or fines will be paid, and have a disparate impact on individuals with low incomes and People of Color. They also create an unnecessary and costly cycle of rearrest and incarceration and waste court resources. Passing this bill now would also help to alleviate strain on the courts, many of which are facing extraordinary backlogs due to the COVID-19 pandemic. Although implementing this bill might actually help increase the payment of fines and fees by preventing unnecessary rearrests and loss of jobs, S. 998 addresses any potential negative impact on state budgets by making grants available to states that make the change. We support the bill and ask that you include it in any Senate floor package.

We recognize that our requests come at a time when other major legislation remains to be completed, but we urge you to prioritize continued reforms to the criminal justice system because the failure to address these issues over many years has led to crisis in communities, especially for People of Color. By continuing to overcriminalize and overincarcerate, we as a nation have both undermined public confidence in our justice system and failed to solve our societal problems. While we are disappointed over the recent end to bipartisan talks in Congress concerning policing reform despite broad areas of agreement, we urge you to act now to advance these three important criminal justice bills highlighted above that enjoy such broad support across the aisle and in both chambers.

Thank you for your consideration, and if you have any questions concerning our requests, please contact Kenneth Goldsmith in the ABA Governmental Affairs Office at (202) 662-1789 or kenneth.goldsmith@americanbar.org.

Sincerely,



Reginald M. Turner
President, American Bar Association

cc: Senate Judiciary Committee