

# THE BREATHE ACT



## SECTION 1:

**DIVESTING FEDERAL RESOURCES FROM INCARCERATION  
AND POLICING & ENDING CRIMINAL-LEGAL SYSTEM  
HARMS**

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## DIVESTING FEDERAL RESOURCES FROM INCARCERATION AND POLICING & ENDING CRIMINAL-LEGAL SYSTEM HARMS

The BREATHE Act is an invest/divest bill, and Section 1 is the primary “divest” portion of the Act. The Section terminates the federal programs and agencies that have been responsible for driving mass criminalization and incarceration—both in the United States and worldwide. The Section also makes direct changes to shrink, end the abuses of, and decarcerate the federal criminal-legal and immigration systems.

- ❖ **Divesting from federal criminal-legal programs (Subsection 1).** The Section first terminates the federal programs and agencies that have been primarily responsible for driving mass incarceration and mass criminalization. To ensure that important non-carceral initiatives that currently receive federal funding from the divested programs are preserved, the Subsection requires the overseeing Department of each repealed program to submit a written report that details any non-carceral programming funded by the repealed offices or programs and identify other grant programs to disburse those funds. This Subsection also creates an Employee Transition Plan for all government employees affected.



Such programs that are repealed include, but are not limited to:

- DOD 1033 program;
- DOD 1122 program;
- DOJ Office of Justice Programs State and Local Law Enforcement Assistance, including the Edward Byrne-Justice Assistance Grant Program;
- DOJ Community Oriented Policing Services, including such programs as Operation Relentless Pursuit;
- DOJ Denaturalization Section;
- DHS Immigration and Customs Enforcement (ICE); and
- Department of Agriculture Community Facilities Program, as spent on construction of jails, prisons, and police facilities.

- ◆ **Funding Preservation for Survivors, Youth & Tribes.** The Subsection establishes funding and programmatic transfers to ensure that Survivors, Youth, and Tribes do not lose critical funding as a result of programmatic repeals in the BREATHE Act.

- Subsection 1C transfers all Tribal funding from defunded offices and programs to the Office of Self Governance within the Department of the Interior.
- Subsection 1D creates a new Office of Survivor Support & Harm Prevention within the Community Public Safety Agency, which will receive all transferred funding for survivors from repealed programs.
- Subsection 1E creates an Office of Youth Support & Harm Prevention Programs within the Community Public Safety Agency, which includes all of the non-carceral, non-punitive programming that was previously funded by the Office of Juvenile Justice and Delinquency Prevention.

- ❖ **Beginning military divestment (Subsection 2).** Next, this Subsection begins the process of shrinking the military-industrial complex that has destabilized democracies worldwide and caused so much devastation to majority Black countries. The Subsection directly terminates the Overseas Contingency Operations and, beginning the fiscal year after enactment, mandates a 10% budget cut on budget function 050, which includes funding for the Department of Defense and Department of Energy nuclear weapons spending. In addition, the Subsection creates a commission that will effectuate, within 4 years of Presidential approval, a 50% reduction in the Department of Defense and Department of Energy budget.
- ❖ **Shrinking the federal criminal-legal system (Subsection 3).** Section 1 finally makes a wide range of changes that will shrink the federal criminal-legal system:





# FEDERAL LAW ENFORCEMENT:

- ❖ The Subsection on Policing makes numerous changes to policing tools and practices available to federal law enforcement, including (but not limited to):
  - Categorically prohibiting federal law enforcement from using:
    - Tear gas, rubber bullets, pepper bullets, pepper spray, flash bangs, long range acoustic devices (LRADs), Stingrays, lasers, and any other “less than lethal” forms of crowd control;
    - Military-grade weaponry; and
    - Predictive policing software.
  - Ending civil asset forfeiture; and
  - Prohibiting federal law enforcement agents, acting under color of law, from the following:
    - Engaging in violence, assault, sexual harassment, or extortion against any member of the public;
    - Engaging in any sexual act with a member of the public who is under arrest, detained, or in custody;
    - Chemical restraints, such as ketamine; and
    - Physical restraints that are life-threatening or that restrict breathing.

# DECRIMINALIZATION

- ❖ The Subsection on Decriminalization **repeals a long list of federal laws that have disproportionately criminalized Black women, youth, and families, including the following:**
  - Several prostitution-related laws (including the Fight Online Sex Trafficking Act, the Stop Enabling Sex Traffickers Act, and the Mann Act);
  - Failure to pay child support obligations;
  - Several conspiracy and gang-related offenses; and
  - Several laws criminalizing youth (including the Juvenile Justice and Delinquency Prevention Act and the Federal Juvenile Delinquency Act).
- ❖ In addition, the Subsection has a **comprehensive policy for ending the devastating War on Drugs, which includes:**
  - Establishing a rulemaking task force, led by the National Institutes of Health (NIH), to draft a rule defining “personal use quantities” and procedures that will facilitate voluntary access to harm-reduction, evidence-based services;
  - Repealing penalties for simple possession, possession with intent to distribute, & possession of certain tools;
  - Shifting all Substance Use Disorder prevention and treatment programs within the jurisdiction of the Department of Justice to the Department of Health and Human Services;
  - Expunging all convictions of offenses that were decriminalized, whether or not the individual has fulfilled every obligation of the individual’s sentence;
  - Reversing, vacating, expunging, or otherwise remedying any civil or other collateral consequence resulting from such conviction;



- Authorizing the immediate resentencing and early sentence termination of sentences for any person who was convicted solely of a drug offense; and
- Requiring the BOP to release individuals who are serving sentences for drug and prostitution-related convictions within one year of enactment.

## PRETRIAL DETENTION

- ◆ The Subsection on Pretrial Detention makes two changes to federal criminal-legal pretrial detention to protect the right to pretrial liberty. The Subsection:
  - Eliminates all existing “presumptions” of pretrial detention that are contained in the Bail Reform Act, including the “previous violator presumption” and “drug and firearm offender presumption”; and
  - Amends the Bail Reform Act to categorically eliminate pretrial detention for any Class C, D, or E felony and for any misdemeanor.





# SENTENCING

- ◆ The Subsection on Sentencing makes a number of changes that eliminate the most inhumane aspects of U.S. sentencing policy—including changes that eliminate the most harmful provisions of the '94 Crime Bill. Such changes include, but are not limited to:
  - Banning the use of algorithm-based “risk-assessment” tools during pretrial or sentencing determinations;
  - Abolishing all mandatory minimum sentencing laws;
  - Abolishing the “three strikes” law;
  - Raising the age of criminal liability to 24;
  - Ending all sentencing enhancements;
  - Abolishing the federal death penalty;
  - Ending life sentences and de facto life sentences; and
  - Ensuring that all sentencing changes are retroactive, meaning that they apply to currently incarcerated individuals.





# DECARCERATION & PRISONS

- ❖ The Subsection on Decarceration & Prisons **creates a roadmap for prison abolition**, specifically by:
  - Requiring that the U.S. Attorney General and Secretary of the HHS create and implement a Population Reduction Plan that:
    - Provides for full decarceration of federal detention facilities within 10 years, without increasing the population on probation, parole, or criminal or civil supervision of any kind; and
    - Enacts a moratorium on all new federal prison, jail, immigrant, and youth detention construction.
- ❖ The BREATHE Act **ends for-profit exploitation in the federal criminal-legal system**, including by:
  - Prohibiting contracts with private, for-profit detention facilities;
  - Ending the privatization of surveillance programs and community corrections; and
  - Prohibiting all so-called “offender-funded” contracts in the federal system and funding all ancillary prison, jail, supervision, and surveillance services using government funding.
- ❖ The BREATHE Act **facilitates the vindication of due process rights**, including by:
  - Repealing the Prison Litigation Reform Act; and
  - Ensuring access to legal representation upon request by a person with an innocence claim in federal prison.
- ❖ Finally, the BREATHE Act **ends some of the worst practices harming incarcerated individuals**, including by:
  - Ending solitary confinement in all federal detention facilities;
  - Categorically ending the practice of incarcerating youth; and
  - Ensuring that the employment rights, including wages, of incarcerated or detained workers in federal detention centers are protected.

# IMMIGRATION

- ◆ The Subsection on Immigration **creates a time-bound plan for closing immigration detention facilities.**
  - The BREATHE Act directs the Secretary of the Department of Homeland Security, the Director of ICE, the Commissioner of CBP, and the Department of Justice Attorney General to close all immigration detention facilities within a specified timeframe.
- ◆ Next, the Subsection addresses the key ways that the immigration and criminal-legal systems intersect. Specifically, the Act:
  - Removes the immigration consequences of criminal-legal contact, such as by:
    - Incorporating the New Way Forward Act (H.R. 5383);
    - Repealing the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA); and
    - Repealing the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA).
  - **Ends all cooperation and coordination between State and local law enforcement and immigration authorities** and revokes all agreements that serve to facilitate detention and deportation; and
  - Enshrines the right to seek asylum based on domestic, sexual, homophobic, transphobic, reproductive, ableist and gang violence into law, as well as eliminates bars to obtaining asylum that include:
    - The one-year application requirement;
    - The bar for a conviction of a so-called “particularly serious crime”; and
    - Any associated fees.



- ❖ Third, underscoring that due process issues in the immigration system parallel those in the criminal-legal system, the Subsection has **several provisions to bolster due process**. These provisions include, but are not limited to:
  - Ending Operation Streamline and mass hearings in criminal immigration cases;
  - Guaranteeing the right to free government-appointed counsel during immigration proceedings; and
  - Establishing the Immigration Court System Task Force that develops a new mechanism to adjudicate immigration cases.
- ❖ Finally, recognizing that the abuses of Customs and Border Protection (CBP) in many ways mirror the abuses that are being perpetrated by law enforcement, the Subsection **overhauls Customs and Border Protection (CBP)** so as to:
  - Refocus CBP on environmental protection, humanitarian aid, and border rescue;
  - Prohibit the use of CBP agents as part of law enforcement;
  - Abolish CBP Border Patrol;
  - Abolish CBP Air and Marine Operations; and
  - Ensure that any border management fully respects U.S. commitments under international law, including respect for the dignity, humanity, and autonomy of all individuals.



# PROSECUTION

- ◆ The Subsection on Prosecution first eliminates “absolute immunity” for prosecutors.
- ◆ Next, the Subsection imposes a number of restrictions that limit prosecutor power, including:
  - Open file discovery in all federal criminal cases;
  - A requirement to document, in writing, all plea offers made in each case; and
  - A requirement that caps sentence recommendations and offers at the last plea offer.
- ◆ Third, the Subsection seeks to protect survivors from coercive tactics—including the issuance of material witness warrants—as a way of forcing their cooperation in investigations or trials.
- ◆ Finally, the Subsection bars the use of compensated informants, including Perkins informants, and prohibits prosecutors from charging both attempt and completion of the same substantive offense against a person.





# COMMUNITY CORRECTIONS

- ◆ The Subsection on Community Corrections bans a wide range of common practices that unjustifiably criminalize and surveil individuals. These include bans on:

- Misdemeanor probation;
- “Pay-only” probation and parole;
- Arrest and re-incarceration over technical violations;
- The use of electronic monitoring;
- The use of devices that gather biometric data;
- Drug testing as a condition of federal probation and parole; and
- The sale of personal data.
- In addition, the Subsection establishes new presumptions that discourage the use of supervision, including a new presumption against probation, parole, or home arrest.

# REENTRY

- ❖ The Subsection on Reentry **addresses many ways that social policy discriminates against people who are formerly incarcerated.**

Specific solutions include:

- Ensuring no healthcare gaps by incorporating the Medicaid Reentry Act (H.R. 1329);
- Incorporating the Fairness and Accuracy in Employment Background Checks Act of 2019 (H.R. 2851), which requires the FBI to update and correct all arrest and conviction records before they are released for employment or licensing purposes;
- Incorporating the Fair Chance Licensing Act (S. 697), requiring all licensing boards and agencies to adopt fair chance licensing protections;
- Prohibiting States from banning receipt of federally-funded public assistance based on prior criminal convictions or drug use;

- ❖ The BREATHE Act **expands reentering individuals' access to higher education,** such as by:

- Incorporating the Beyond the Box for Higher Education Act (S.1338);
- Incorporating the Expanding Educational Opportunities for Justice-Impacted Communities Act (H.R. 4073), ensuring that currently and formerly incarcerated individuals can access Pell Grants; and
- Eliminating drug conviction questions from the Free Application for Federal Student Aid (FAFSA).



- ❖ The Subsection **enhances reentering individuals' protections against employment discrimination**, such as by authorizing funding that the Equal Employment Opportunity Commission can use to aggressively enforce federal anti-discrimination laws.
- ❖ The BREATHE Act **addresses housing instability among reentering individuals**, specifically through creating a Reentry Housing Voucher Assistance Program that provides housing vouchers for individuals who are being released from local, State, or federal criminal-legal facilities.
- ❖ The Subsection **addresses economic security for reentering individuals**, specifically through creating a Warm Handoff Reentry Program that provides a supplemental monthly benefit to help cover reentering individuals' housing, transportation, and food costs.
- ❖ Finally, the Subsection on Reentry **expands employment opportunities for reentering individuals**, specifically by creating a new Reentry Employment Opportunities Program in the Employment and Training Administration at the Department of Labor, which provides reentry and workforce development services for individuals who have criminal records.



# END THE WAR ON BLACK FAMILIES

- ◆ The Subsection on Ending the War on Black Families **repeals two of the major child welfare laws** that have been particularly devastating to Black families, namely the Adoption and Safe Families Act (ASFA) and the Child Abuse Prevention and Treatment Act (CAPTA).
- ◆ In addition, the Subsection **eliminates requirements that survivors need to file police reports** if they wish to receive services.

