



Cheryl Davila  
Councilmember  
District 2

ACTION CALENDAR

October 13, 2020

*(Continued from September 22, 2020)*

To: Honorable Mayor and Members of the City Council

From: Councilmember Cheryl Davila (Author) and Councilmember Ben Bartlett (Co-Sponsor)

Subject: Request the United States House of Representatives and/or Senate to introduce  
"The Breathe Act"

RECOMMENDATION

1. Adopt a resolution requesting the United States House of Representatives and Senate to introduce legislation known as "The Breathe Act".
2. Send copies of this resolution to United States Congresswoman Barbara Lee, Alexandria Ocasio-Cortez, Pramila Jayapal, Rashida Tlaib, Ayanna Pressley and Senator Bernie Sanders.

BACKGROUND

The BREATHE Act is proposed legislation by the Movement for Black Lives Electoral Justice Project to get the United States House of Representatives to introduce it in a form of a bill. The proposed legislation contains 4 parts: (1) Divesting Federal Resources from Incarceration and Policing & Ending Criminal-Legal System Harms; (2) Investing in New Approaches to Community Safety Utilizing Funding Incentives; (3) Allocating New Money to Build Healthy, Sustainable & Equitable Communities for All People; (4) Holding Officials Accountable & Enhancing Self-Determination of Black Communities.

**1. Divesting Federal Resources from Incarceration and Policing & Ending Criminal-Legal System Harms**

The proposed legislation would eliminate federal programs and agencies used to finance and expand the U.S. criminal-legal system, such as the Department of Defense program, the Edward Byrne-Justice Assistance Grant Program, Community Oriented Policing Services, the Drug Enforcement Administration, and Immigration and Customs Enforcement. The legislation would ensure that non-punitive, non-carceral elements of these programs are identified so that they can be transferred to another funding source. Make recommendations to dramatically reduce the Department of Defense budget. The legislation directly makes changes to the federal criminal-legal system, including changes to the policing, prosecution, sentencing, and jailing practices that have disproportionately criminalized Black and Brown communities, LGBTQIA people, Indigenous people, and disabled people. Specific changes include, but are not limited to:

- Elimination of surveillance tactics that are disproportionately used to target Black, Brown, and Muslim communities by prohibiting predictive policing, racial recognition technologies, drones, and similar tools;
- Eliminating the use of electronic monitoring, including ankle monitors, smartphone applications, and any other tool used to track location;
- Ending civil asset forfeiture;
- Abolishing mandatory minimum sentencing laws;
- Ending like sentences;
- Abolishing the “three strikes” law;
- Developing a time-bound plan to close all federal prisons and immigration detention centers;
- Repealing federal laws that criminalize human movement and border entry;
- Further repealing and replacing the 1994 Violent Crime Control and Law Enforcement Act with non-carceral, non-punitive investments in communities; and
- Decriminalizing and retroactively expunged drug offenses.

## **2. Investing in New Approaches to Community Safety Utilizing Funding Incentives**

The proposed legislation would create federal grant programs that incentivize decarceration and subsidize non-punitive, community-led approaches to public safety. Such grants will:

- Make grants to local jurisdictions so that they can make and implement tailored plans to decarcerate their jails and/or defund their police forces;
- Offer a 50% federal match for projected savings when States and/or local jurisdictions close detention facilities, including (but not limited to) local jails, State prisons, and youth prisons; and
- Incentivize State, tribal, and local governments to make specified changes that shrink their criminal-legal systems and, in return, provide federal funding to make non-punitive, non-carceral, participatory investments in communities.
- State, tribal, and local policy changes incentivized under the grant programs include, but are not limited to, the following:
  - Banning pretextual stops and “consent” searches;
  - Removing police, armed security, metal detectors, and other surveillance equipment from schools and government offices that provide social services;
  - Abolishing State gang databases;
  - Eliminating all fees and surcharges within the criminal-legal system and forgiving outstanding court debt, reducing a financial burden that falls disproportionately on Black women;
  - Decriminalizing and retroactively expunging State drug convictions;
  - Categorically eliminating misdemeanor and “pay only” probation;
  - Until ICE and CBP are fully dismantled, ending State and local police entanglement with Immigration and Customs Enforcement (ICE), Customs and Border Protection (CBP), and all federal immigration enforcement agencies;
  - Repealing all existing State juvenile offenses; and
  - Banning the use of police agencies as tools of political repression.
- States are selected as recipients of the grant programs, funding must be used to fund non-carceral interventions that improve community safety and are

selected through a participatory process. Selected interventions may include, but are not limited to:

- Transformative justice and healing justice programs;
- Violence interruption and intervention, including in domestic violence situations;
- Abuse interruption, intervention, and prevention;
- Park redevelopment, streetlights, and other infrastructure;
- Neighborhood mediation programs;
- Supportive housing;
- New, accessible methods of processing 911 calls that reduce unnecessary contact between law enforcement and community members;
- Safe passage to schools programs;
- Funding for community-based organizations that provide voluntary, non-coercive health services and healing supports for communities so that they can recover from exposure to violence, abuse, and/or harmful interactions with police; and
- Employment opportunities that benefit formerly incarcerated individuals.

### **3. Allocating New Money to Build Healthy, Sustainable & Equitable Communities for All People**

The legislation would establish a grant to promote educational justice, which:

- Incentivizes jurisdictions to make specified equity-focused policy changes, including:
  - Altering their school funding formulas so that there is funding equity between schools;
  - Creating a clear, time-bound plan for closing all youth detention facilities within the jurisdiction and replacing these facilities with community-based, rehabilitation-focused continua of care;
  - Removing police, School Resource Officers (SROs), ICE, probation, armed security, metal detectors, and other surveillance equipment and practices from schools;
  - Creating a clear, time-bound plan for ensuring that all communities have public access to safe, clean water for housing, drinking, and food production;
  - Creating a clear, time-bound plan for ensuring that all communities have access to breathable air within EPA safety limits; and
  - Creating a clear, time-bound plan for meeting 100% of the State power demand using clean, renewable, and zero-emission energy sources.
- Provides resources for programs and investments that include, but are not limited to:
  - Developing curricula that examine the political, economic, and social impacts of colonialism, genocide against indigenous people, and slavery;
  - Providing voluntary, non-coercive wraparound services that meet students' social, emotional, and physical needs;
  - Promoting innovative programming to better support foster youth, as well as the children of incarcerated parents;
  - Providing free, high-quality health services at schools and/or at nearby student- and family-focused centers, which services include reproductive body autonomy;

- Providing full and free access for all people, including those who are undocumented, currently incarcerated, and formerly incarcerated, to a lifetime education;
  - Providing free public transportation to students; and
  - Modernizing, renovating, or repairing facilities used by public schools.
  - Subsidizing community-owned sustainable energy solutions, including projects by community-based nonprofit organizations;
  - Funding climate resilience in communities so that they can prepare for climate change-fueled disasters (such as hurricanes, floods, and wildfires) that are exacerbated by human fossil fuel consumption; and
  - Funding to support, build, preserve, and restore cultural assets and sacred sites—especially sites and land belonging to the Indigenous community.
- Establish a competitive grant to promote health and family justice, which:
    - Incentivizes jurisdictions to make specified equity-focused policy changes, such as:
      - Expanding Medicaid as offered under the Affordable Care Act without work requirements or any burdensome administrative requirements during enrollment;
      - Creating alternatives to terminating parental rights, including guardianship arrangements, and procedures for reinstating parental rights;
      - Eliminating State laws that bar formerly incarcerated people from serving as guardians to their own children or others in their community; and
      - Ensuring all communities have convenient access to sources of healthy food.
    - Provide resources for programs and investments that include, but are not limited to:
      - Food cooperatives and urban gardens;
      - Paid parental and sick leave;
      - Comprehensive, high-quality child and elder care; and
      - The creation of comprehensive health centers that offer culturally competent services for all people, including services related to reproductive health.
    - Establish a competitive grant to promote economic justice, which incentivizes States to make specified equity-focused policy changes, such as:
      - Valuing the labor of Black and Brown women by extending employment protections for workers—including domestic workers and farm workers—who are in industries that are not appropriately regulated;
      - Establishing the right for workers, in public and private sectors, to organize, especially in “On Demand Economy” jobs; and
      - Establishing a living wage, pegged to inflation, and eliminating the subminimum tipped wage.
    - Provide resources for programs and investments that include, but are not limited to:

- Establishing job programs that specifically target the most economically disadvantaged individuals, including groups that disproportionately include Black cis- and trans women, formerly incarcerated people, undocumented people, and disabled people;
- Pilot programs for universal basic income;
- “Baby bonds” programs, including a preference for communities that were specifically targeted by redlining
- Start-up funds for establishing worker-owned cooperatives and businesses that are being started by individuals who are formerly incarcerated.
- Establish a competitive Housing & Infrastructure Grant Program that:
  - Incentivizes jurisdictions to make specified equity-focused policy changes, such as:
    - Authorizing State funds to expand the affordable housing supply; and
    - Change local zoning laws so as to allow multifamily unit construction and ban exclusionary zoning laws.
  - Provide resources for programs and investments that include, but are not limited to:
    - Modernizing and expanding the stock of affordable housing;
    - Providing quality assisted housing;
    - Creating tax-relief programs to help individuals who are facing potential displacement as the result of rapidly increasing home values (i.e., gentrification); and
    - Supporting the development of Community Land Trusts.
- Make direct federal investments in equity, which include:
  - A federal commission that proposes changes to tax policy, which will dramatically increase racial and economic equity;
  - A universal child allowance;
  - A program that provides assistance with down payments and closing costs—specifically for those households that rent or live in historically redlined communities;
  - Land grant programs in cities experiencing economic decline and/or hyper-vacancies;
  - A program at the United States Department of Agriculture, which will forgive the debt of Black farmers who were impacted by previous United States Department of Agriculture discrimination;
  - Tools to promote environmental justice, including an Equity Impact Mapping Initiative & Equity Screen and a Green Infrastructure Program; and
  - Federal programs to better support successful reentry.

#### **4. Holding Officials Accountable & Enhancing Self-Determination of Black Communities**

The legislation would require Congress to acknowledge and address the lasting harms that it has caused, specifically through:

- Passing H.R.40 (“Commission to Study Reparation Proposals for African-Americans Act”); and
- Establishing commissions that design reparations for mass criminalization—including the War on Drugs, the criminalization of prostitution, and police

violence; border violence; and the systemic violation of the U.S. Government's treaty obligations to Tribal nations.

- Ensure democratic, fair, and secure voting processes that are free from racial discrimination and voter suppression in every State, specifically through measures that include:
  - Enfranchising all formerly and presently incarcerated people in federal elections;
  - Creating a public financing program for campaigns that are powered by small dollar contributions;
  - Incentivizing States to increase voter turnout;
- Incentivizing States to pass laws that expand voting access, including laws that:
  - Enfranchise all formerly and presently incarcerated people for State and local elections; and
  - Allowing local and State resident voting for undocumented people.
- Increase accountability for federal officials and police officers who have committed harms, specifically by measures that include:
  - Guaranteeing a private right of action for recovering damages when a federal official has committed a constitutional violation; and
  - Creating a grant program that offers States grant dollars if they strengthen mechanisms to hold police officers accountable when they have committed harm.

The legislation has yet to be introduced by a current member of the United States Congress or Senate.

#### FINANCIAL IMPLICATIONS

None.

#### ENVIRONMENTAL SUSTAINABILITY

Protecting our communities during this climate and health crisis is an act of environmental sustainability.

#### CONTACT PERSONS

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#### ATTACHMENTS:

1. Resolution

RESOLUTION NO. ##,###-N.S.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BERKELEY, CALIFORNIA, REQUESTING THE UNITED STATES HOUSE OF REPRESENTATIVES AND/OR SENATE TO INTRODUCE THE “BREATHE ACT”

WHEREAS, The BREATHE Act is proposed legislation by the Movement for Black Lives Electoral Justice Project to get the United States House of Representatives to introduce it in a form of a bill. The proposed legislation contains 4 parts: (1) Divesting Federal Resources from Incarceration and Policing & Ending Criminal-Legal System Harms; (2) Investing in New Approaches to Community Safety Utilizing Funding Incentives; (3) Allocating New Money to Build Healthy, Sustainable & Equitable Communities for All People; (4) Holding Officials Accountable & Enhancing Self-Determination of Black Communities.

WHEREAS, The BREATHE Act would divest Federal Resources from Incarceration and Policing & Ending Criminal-Legal System Harms. The proposed legislation would eliminate federal programs and agencies used to finance and expand the U.S. criminal-legal system, such as the Department of Defense program, the Edward Byrne-Justice Assistance Grant Program, Community Oriented Policing Services, the Drug Enforcement Administration, and Immigration and Customs Enforcement. The legislation would ensure that non-punitive, non-carceral elements of these programs are identified so that they can be transferred to another funding source. Make recommendations to dramatically reduce the Department of Defense budget. The legislation directly makes changes to the federal criminal-legal system, including changes to the policing, prosecution, sentencing, and jailing practices that have disproportionately criminalized Black and Brown communities, LGBTQIA people, Indigenous people, and disabled people. Specific changes include, but are not limited to:

- Elimination of surveillance tactics that are disproportionately used to target Black, Brown, and Muslim communities by prohibiting predictive policing, racial recognition technologies, drones, and similar tools;
- Eliminating the use of electronic monitoring, including ankle monitors, smartphone applications, and any other tool used to track location;
- Ending civil asset forfeiture;
- Abolishing mandatory minimum sentencing laws;
- Ending like sentences;
- Abolishing the “three strikes” law;
- Developing a time-bound plan to close all federal prisons and immigration detention centers;
- Repealing federal laws that criminalize human movement and border entry;
- Further repealing and replacing the 1994 Violent Crime Control and Law Enforcement Act with non-carceral, non-punitive investments in communities; and
- Decriminalizing and retroactively expunged drug offenses.

WHEREAS, The BREATHE Act would invest in New Approaches to Community Safety Utilizing Funding Incentives. The proposed legislation would create federal grant programs that incentivize decarceration and subsidize non-punitive, community-led approaches to public safety. Such grants will:

- Make grants to local jurisdictions so that they can make and implement tailored plans to decarcerate their jails and/or defund their police forces;

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  - Categorically eliminating misdemeanor and “pay only” probation;
  - Until ICE and CBP are fully dismantled, ending State and local police entanglement with Immigration and Customs Enforcement (ICE), Customs and Border Protection (CBP), and all federal immigration enforcement agencies;
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  - Neighborhood mediation programs;
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  - Funding for community-based organizations that provide voluntary, non-coercive health services and healing supports for communities so that they can recover from exposure to violence, abuse, and/or harmful interactions with police; and
  - Employment opportunities that benefit formerly incarcerated individuals.

WHEREAS, The BREATHE Act allocates new money to build Healthy, Sustainable & Equitable Communities for All People. The proposed legislation would establish a grant to promote educational justice, which:

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  - Establishing the right for workers, in public and private sectors, to organize, especially in “On Demand Economy” jobs; and
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  - Federal programs to better support successful reentry.

WHEREAS, The BREATHE Act would hold Officials accountable & enhance Self-Determination of Black Communities. The proposed legislation would require Congress to acknowledge and address the lasting harms that it has caused, specifically through:

- Passing H.R.40 (“Commission to Study Reparation Proposals for African-Americans Act”); and
- Establishing commissions that design reparations for mass criminalization—including the War on Drugs, the criminalization of prostitution, and police violence; border violence; and the systemic violation of the U.S. Government’s treaty obligations to Tribal nations.
- Ensure democratic, fair, and secure voting processes that are free from racial discrimination and voter suppression in every State, specifically through measures that include:
  - Enfranchising all formerly and presently incarcerated people in federal elections;
  - Creating a public financing program for campaigns that are powered by small dollar contributions;
  - Incentivizing States to increase voter turnout;
- Incentivizing States to pass laws that expand voting access, including laws that:
  - Enfranchise all formerly and presently incarcerated people for State and local elections; and
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- Increase accountability for federal officials and police officers who have committed harms, specifically by measures that include:
  - Guaranteeing a private right of action for recovering damages when a federal official has committed a constitutional violation; and
  - Creating a grant program that offers States grant dollars if they strengthen mechanisms to hold police officers accountable when they have committed harm.

NOW THEREFORE BE IT RESOLVED that the City Council of the City of Berkeley, California requests the United States House of Representatives and Senate to introduce legislation known as "The Breathe Act".

BE IT FURTHER RESOLVED, copies of this resolution are sent to United States Congresswoman Barbara Lee, Alexandria Ocasio-Cortez, Pramila Jayapal, Rashida Tlaib, Ayanna Pressley and Senator Bernie Sanders.