Reckoning with mass criminalization and mass incarceration:
A Proposal to advance a new vision of public safety and dismantle the 1994 Crime Bill through a participatory People’s Process

BACKGROUND

After 25 years, opponents of the Violent Crime Control and Law Enforcement Act of 1994 (the “94 Crime Bill”) have been proven right. While everyone supports violence reduction—the purported goal of the 94 Crime Bill—several of the provisions included in the 94 Crime Bill to achieve this goal have been proven ineffective and harmful. In particular, draconian punishment and imprisonment of citizens and non-citizens alike, paired with increased resourcing and militarization of the police, did not make communities safer. Instead, the 94 Crime Bill contributed to mass incarceration, overpolicing, and mass criminalization, destabilizing an entire generation of families in the United States, with particularly destructive impact on Black communities. By endorsing and financing ineffective and damaging policies and practices at the state and local levels, the 94 Crime Bill encouraged the growth of police and prison infrastructure while failing to prioritize community investments that would have increased public safety, particularly in under-resourced communities.

At the time of its passage, the 94 Crime Bill faced widespread criticism from criminologists, civil-rights lawyers, community activists, and numerous members of Congress. Today, advocates, organizers, and even elected officials who had previously supported the Bill recognize the 94 Crime Bill’s flawed nature and the need to remedy the damage that has been done.

This brief summarizes key aspects of the 94 Crime Bill and proposes replacing it with a modern public safety bill to be designed and shaped by sustained community engagement: a piece of 21st century legislation that acknowledges and begins to repair the harmful, ineffective, and wasteful aspects of overpolicing, mass criminalization, and mass incarceration, while imagining a new vision of safety for our nation’s communities that advances their freedom to thrive.
94 CRIME BILL MAJOR PROVISIONS

Prison:
- Authorized nearly $10 billion in subsidies to expand state prisons
- Eliminated Pell Grants (higher educational grants) for people in prison
- Established system to compensate states for incarcerating undocumented immigrants

Sentencing:
- Implemented a “three strikes” rule (mandatory life imprisonment without parole for committing a serious violent felony when the person has two prior felony convictions, one of which must be a serious violent felony but the other could be a “serious drug offense”)
- Permitted 13 year-olds to be tried as adults
- Created 60 new death penalty offenses
- Enhanced penalties for drug-related offenses
- Established new and increased criminal penalties for immigration violations
- Added dozens of new federal offenses

Policing:
- Established Community Oriented Policing Services (the “COPS office”) and appropriated $8.8 billion for 1995 to 2000; COPS has granted over $14 billion to local law enforcement agencies through grants and information sharing since its establishment
- Established the Violence Against Women Act

Gun Safety:
- Established the Federal Assault Weapons Ban (prohibiting the manufacture of 19 semi-automatic firearms, which expired in 2004 and was not renewed)

Oversight:
- Established federal authority to investigate patterns or practices of misconduct by law enforcement and government officials in juvenile justice systems

94 CRIME BILL KEY FLAWS & IMPACTS

Invested in and endorsed policing, punitive sentencing, and incarceration as the primary, if not exclusive, means to advance public safety:
- Failed to adequately invest in public safety measures that strengthened communities, such as jobs, substance abuse treatment, mental health, youth services, support for reentering citizens, or traditional urban infrastructure
- Created the COPS Office, which has invested more than $14 billion in state and local law enforcement agencies since 1994, including the former Cops in Schools, COPS Hiring Program, School-Based Partnerships, and Secure Our Schools Program grant programs and the current School Violence Prevention program, which provide seed money for local districts to fund school policing and surveillance infrastructure programs that have been largely responsible for driving the school-to-prison pipeline locally
- Placed the vast bulk of resources and funding for addressing violence against women into punitive legal systems, including deepening police involvement and criminal prosecution as means to reduce domestic violence
- Included a 10-year expiration for an already limited in scope assault weapons ban, one of the few non-criminalization public safety initiatives in the Bill

Contributed to mass incarceration and criminalization, destabilizing an entire generation of people and their families:
- Expanded and encouraged building of state prisons and police forces, thereby fueling and solidifying massive rates of incarceration nationwide
- Endorsed and led to expansion in size, scope, and militarization of police and corrections departments, putting tremendous pressure on state and local municipalities to bear the burden of these budgets
- Incentivized states to increase prison rolls by awarding grant money for prisons if they passed “truth-in-sentencing” laws, which required individuals to serve at least 85 percent of their sentences
- Fueled the school-to-prison pipeline by awarding grants to local law enforcement agencies that established or grew their school policing programs and/or installed invasive security technology
- Exacerbated the criminalization of migration and developed state and local incentives for the incarceration of immigrants
Rep. Bobby Scott (D-VA) opposed the 94 Crime Bill, believing that increasing prison capacity and population would be ineffective at reducing crime. Instead, Rep. Scott championed the increase of prevention programs rather than an increase of punitive measures. Rep. Scott also emphasized contemporaneously that, while most criminal law enforcement is state and local rather than federal, the 1994 Crime Bill “give[s] state legislatures ideas of what they ought to do.”

Rep. Maxine Waters (D-CA) strongly opposed the 94 Crime Bill. In 2006, she testified: “[T]he implementation of the ‘three-strikes’ law and subsequent mandatory sentencing schemes perpetuated a downward spiral for African Americans. In California, 44 percent of the more than 6,500 people sentenced after a third strike have been African American, prompting one critic to label that state’s 7-year old law ‘California’s apartheid.’ In many instances, police concentrate their patrols on poorer communities that have high crime rates and low-level drug dealing. Furthermore, lower income defendants are typically less able to afford adequate legal counsel. This, in turn, has led to more guilty pleas, or ‘strikes.’”

Reflecting on the 20 year anniversary of the passage of the 94 Crime Bill, Jeremy Travis, former President of John Jay College of Criminal Justice, explained: “We now know with the fullness of time that we made some terrible mistakes. . . And those mistakes were to ramp up the use of prison. And that big mistake is the one that we now, 20 years later, come to grips with. We have to look in the mirror and say, ‘look what we have done.’”

Bruce Shapiro, U.S. Journalist, wrote in The Nation: “The 1994 crime bill was never mostly about crime. It was designed from the beginning as a political symbol. Back in the 1990s, crime was to Bill Clinton as illegal immigration is to Donald Trump and Ted Cruz today: a way of reassuring fearful, alienated white voters, especially in the South. Fear of offenders, fear of gangs, fear of ungovernable teenage ‘superpredators’ (a supposed generational wolf-pack who never actually appeared): Those were the political currency of the era.”

Alicia Garza, co-founder of Black Lives Matter, wrote in an opinion piece featured on CNN: “The crime bill was part of a national effort that resulted in the reality that black people, who comprise approximately 13% of the nation's population, represent 40% of the people incarcerated in this country. . . . The 1994 crime bill and its resulting policies were supposedly designed to curb violent crime. Yet the bill itself resulted in the bloating of prisons and jails with nonviolent offenders.”

Michelle Alexander wrote in The Nation, commenting on Bill Clinton’s “tough on crime” policies, including the 94 Crime Bill: “When Clinton left office in 2001, the United States had the highest rate of incarceration in the world. Human Rights Watch reported that in seven states, African Americans constituted 80 to 90 percent of all drug offenders sent to prison, even though they were no more likely than whites to use or sell illegal drugs. Prison admissions for drug offenses reached a level in 2000 for African Americans more than 26 times the level in 1983.”
94 CRIME BILL: BY THE NUMBERS

- The 94 Crime Bill authorized a total of $30.2 billion over six years, from 1995-2000. The bulk of these dollars were designated for law enforcement and prison infrastructure, contributing significant financial resources to overpolicing, mass incarceration, and criminalization:26
  - Authorized a combined $23.1 billion for law enforcement and prison construction, as compared to $7.1 billion to “Crime Prevention” (for example, grants for combating “violent crimes against women,” drug courts, after-school programs, and employment and business development programs, among others).27 Some of this “Crime Prevention” money also included direct and indirect resourcing for law enforcement programs.
  - Authorized a total of $10.8 billion for several programs to assist state and local law enforcement. Most of the funds—$8.8 billion—was to support hiring additional police officers.28
  - Authorized $9.7 billion for states to build and operate prisons, including for the incarceration of undocumented immigrants.29
  - The number of police officers increased 28 percent, from 699,000 to 899,000, from 1990 to 1999, an increase partially funded by the Bill.30
  - The COPS office has funneled more than $1 billion to fund the expansion of policing and surveillance infrastructure in schools. The Cops in School program, for example, funded hiring 7,242 School Resource Officers (SROs) in schools throughout the US between 1999 and 2005 and even more SROs were funded through other COPS programs. After the Cops in Schools funding ended, local school districts had to fund these SROs.33
A NEW PATH FORWARD:
PEOPLE’S PROCESS FOR SAFETY AND FREEDOM

A replacement public safety bill will be designed around the following key principles:

1) Acknowledging the harms and ineffectiveness of overpolicing, mass criminalization, and mass incarceration
2) Repairing the damage wrought by the 94 Crime Bill and punitive, expensive, violent, and racist systems of criminalization
3) Investing in strategies, solutions, and resources that protect and improve the health, welfare, and safety of communities
4) Engaging with communities nationwide through a participatory “people’s process” to develop this transformative legislation

Key provisions of a replacement bill

✓ Sweeping direct expenditures into communities harmed by overpolicing, mass criminalization, and mass incarceration through a deep investment in jobs, substance abuse centers, mental health clinics, youth programs, supportive housing, and basic urban infrastructure revitalization
✓ A statutory and administrative system that revises federal sentencing, and incentivizes shifts in state and local policy and budgeting towards health, well-being, and decarceration, rather than policing and mass criminalization and incarceration
✓ Resources towards educational, employment, civic engagement, and housing opportunities for the incarcerated and formerly incarcerated
✓ Elimination of the federal use of the death penalty, private prisons, and immigration detention facilities
✓ Resources and programs that advance school safety and dismantle the school-to-prison pipeline, including investments in students and teachers, as well as restorative justice, youth jobs, counseling, after-school, and meal programs in lieu of infrastructure and police personnel that criminalize students and school environments
✓ A gender- and racial-justice oriented Violence Against Women Act that centers restorative practices and services outside of punitive legal systems
✓ Expanded and permanent supply-side and non-criminalization gun safety measures
✓ Continued and expanded federal oversight and investigatory powers over local police departments

A PEOPLE’S PROCESS

The replacement bill should be envisioned and developed through the participation of the people most harmed by overpolicing, mass criminalization, and mass incarceration. For far too long and in far too many ways, federal legislation has been driven by powerful interests and drafted in opaque ways. By bringing a transformative approach to building consensus and content for a transformative legislative outcome, we seek to change the way--and for whom--policy and budgeting operates.

There is historical precedent for such a process, both in the U.S. and abroad. For example, the federal Economic Opportunity Act of 1964 included an initiative called Community Action Programs (CAPS), which called for “maximum feasible participation” at the local level from people with low incomes to determine the type of program design that would be most impactful.

A People’s Process for developing Safety and Freedom legislation would include:

• Townhalls, workshops, and peoples’ assemblies on the impact of mass criminalization and mass incarceration
• Local and national forums to discuss the basic unmet needs of families and communities and their connection to safety
• In-district Congressional hearings on the impact of the 94 Crime Bill and mass criminalization and mass incarceration broadly
• A transparent, participatory legislative drafting process by which community input and feedback—particularly from marginalized and directly impacted people—is incorporated into the text of a Congressional bill
RESOURCES AND KEY COMMENTARY

Legislation
- H.R. 2944, Over-Criminalization Task Force Safe, Accountable, Fair, Effective Justice Reinvestment Act of 2015 (Reps. Sensenbrenner (R-WI-5) & Scott, D-VA-3)
- S.1458, Reverse Mass Incarceration Act of 2017 (Sen. Cory Booker, D-NJ)

Reports/Books
- Center for Popular Democracy, Law for Black Lives, Black Youth Project 100, "Freedom to Thrive: Reimagining Safety and Security in Our Communities" (2017)
- Movement for Black Lives, "A Vision for Black Lives"
- Dream Defenders, "Freedom Papers"
- BYP100, "Agenda to Build Black Futures"; She Safe We Safe
- Just Leadership USA “Build Communities”
- Advancement Project, “We Came to Learn: A Call to Action for Police-Free Schools” (2018)

Commentary
- Inimai Chettiar and Lauren-Brooke Eisen, The Reverse Mass Incarceration Act, The Brennan Center for Justice (2015);
- Albert W. Dzur, “Participatory Democracy and Criminal Justice,” 6 Criminal Law & Philosophy 6, no. 2 (June 2012).
- Victoria Law, “Against Carceral Feminism,” Jacobin (October 17, 2014)
Michelle Alexander explains that the wave of criminalization under the auspices of the War on Drugs created a new system of racial control by targeting Black communities. The Anti-Drug Abuse Act of 1986, for example, included more severe punishment for distribution of crack (typically associated with Black people) than powder cocaine (typically associated with white people). In addition to increasingly long sentences, legislators at the federal, state, and local level passed laws attaching civil penalties, such as exclusion from public housing or ineligibility for student loans, to the weight of criminal convictions. Both sides of the aisle took up the racialized rhetoric of the War on Drugs. President Bill Clinton advocated for some of the most damning legislation, including the Violent Crime Control and Law Enforcement Act of 1994. In 1996, Clinton signed the Antiterroism and Effective Death Penalty Act into law, which severely restricted the appeals process for people on death row and made meaningful judicial review nearly impossible. Michelle Alexander, The New Jim Crow: Mass Incarceration in the Age of Colorblindness (New York: The New Press, 2012). See also: Marc Mauer, The Race to Incarcerate (New York: The New Press, 2008); Christian Parenti, Lockdown America: Police and Prisons in the Age of Crisis (New York: Verso, 1999).


ADDENDUM: SUPPORT AND OPPOSITION OF THE 94 BILL

The following members of Congress supported the Bill and are still in office:

- Congressman Sanford Bishop (D-GA)
- Senator Dick Durbin (D-IL) (voted in favor while serving in the House)
- Congressman Eliot Engel (D-NY)
- Congresswoman Ana Eshoo (D-CA)
- Congressman Steny Hoyer (D-MD)
- Congresswoman Eddie Johnson (D-TX)
- Congresswoman Marcy Kaptur (D-OH)
- Senator Ed Markey (D-MA) (voted in favor while serving in the House)
- Senator Bob Menendez (D-NJ) (voted in favor while serving in the House)
- Congressman Richard Neal (D-MA)
- Congresswoman Lucille Roybal-Allard (D-CA)
- Congressman Bobby Rush (D-IL)
- Senator Bernie Sanders (I-VT) (voted in favor while serving in the House)
- Senator Chuck Schumer (D-NY) (voted in favor while serving in the House)
- Congressman José Serrano (D-NY)
- Senator Sherrod Brown (D-OH) (voted in favor while serving in the House)
- Senator Maria Cantwell (D-WA) (voted in favor while serving in the House)
- Senator Ben Cardin (D-MD) (voted in favor while serving in the House)
- Congressman James Clyburn (D-SC)
- Congresswoman Rosa DeLauro (D-CT)
- Congressman Al Green (D-TX)
- Luis Gutiérrez (D-IL)
- Congressman Alcee Hastings (D-FL)
- Congresswoman Nita Lowey (D-NY)
- Congresswoman Carolyn Maloney (D-NY)
- Congressman Frank Pallone (D-NJ)
- Congresswoman Nancy Pelosi (D-CA)
- Senator Jack Reed (D-RI) (voted in favor while serving in the House)
- Congressman Bennie Thompson (D-MS)
- Congressman Pete Visclosky (D-ID)
- Senator Ron Wyden* (D-OR) (voted in favor while serving in the House)
- Senator Dianne Feinstein (D-CA)
- Senator Patrick Leahy (D-VT)
- Senator Patty Murray (D-WA)
- Congressman Peter King (R-NY)
- Congressman Chris Smith (R-NJ)
- Congresswoman Ileana Ros-Lehtinen (R-FL)
- Congressman Fred Upton (R-MI)

The following members of Congress opposed the Bill and are still in office:

- Congressman Peter DeFazio (D-OR)
- Congressman Jerrold Nadler (D-NY)
- Congressman John Lewis (D-GA)
- Congressman Collin Peterson (D-MN)
- Congressman Bobby Scott (D-VA)
- Congresswoman Maxine Waters (D-CA)
- Senator Richard Shelby (D-AL) (Republican since 1994)
- Senator Chuck Grassley (R-IA)
- Senator Orrin Hatch (R-UT)
- Senator Mitch McConnell (R-KY)
- Senator Lisa Murkowski (R-AK)
- Congressman Joe Barton (R-TX)
- Congressman John Duncan (R-TN)
- Senator James Inhofe (R-OK) (voted against while serving in the House)
- Congressman Sam Johnson (R-TX)
- Congressman Lamar Smith (R-TX)
- Congressman Ken Calvert (R-CA)
- Senator Mike Crapo (R-ID) (voted against while serving in the House)
- Congressman Bob Goodlatte (R-VA)
- Congressman Frank Lucas (R-OK)
- Senator Rob Portman (R-OH) (voted against while serving in the House)
- Senator Pat Roberts (R-KS) (voted against while serving in the House)
- Congressman Hal Rogers (R-KY)
- Congressman Dana Rohrabacher (R-CA)
- Congressman Ed Royce (R-CA)
- Congressman Jim Sensenbrenner (R-WI)
- Congressman Don Young (R-AK)

Other Notable Names

- Joe Biden (primary drafter)