

# SENATE, No. 677

## STATE OF NEW JERSEY 217th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2016 SESSION

**Sponsored by:**

**Senator RONALD L. RICE**

**District 28 (Essex)**

**SYNOPSIS**

Requires racial and ethnic impact statement for certain bills and regulations affecting sentencing.

**CURRENT VERSION OF TEXT**

Introduced Pending Technical Review by Legislative Counsel.



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1 AN ACT concerning certain racial and ethnic impact statements,  
2 supplementing Title 1 of the Revised Statutes and Title 2C of the  
3 New Jersey Statutes, and amending P.L.1968, c.410.  
4

5 **BE IT ENACTED** by the Senate and General Assembly of the State  
6 of New Jersey:  
7

8 1. (New section) The Legislature finds and declares that:

9 a. Public policymakers are increasingly concerned with the  
10 disparity between the number of minorities in the population and  
11 the number incarcerated in jails and prisons.

12 b. Racial and ethnic disparities in America's criminal justice  
13 system result in devastating consequences to society: offenders face  
14 daunting employment challenges, reduced lifetime employment  
15 earnings, and lack of access to public benefits; offenders' families  
16 face the shame and stigma associated with incarceration, as well as  
17 the loss of financial and emotional support of a loved one; and high  
18 rates of recidivism and burgeoning prison system costs affect all  
19 communities.

20 c. Nationally, one of every nine black males between 20 and 34  
21 years old is incarcerated; 38 percent of prisoners under federal and  
22 state jurisdiction at the end of 2010 were black, 32 percent were  
23 white, and 22 percent were Hispanic; according to 2010 United  
24 States Census data, 12.6 percent of the United States population is  
25 black.

26 d. In this State, 61 percent of the prison population is black, 22  
27 percent is white and 16 percent is Hispanic; blacks make up 13.7  
28 percent of the general population.

29 e. Based on current trends, one of three black males born today  
30 will serve time; the odds of Hispanic males serving time are one in  
31 six.

32 f. Criminal justice policies, while neutral on their face, often  
33 adversely affect minority communities; these unintended  
34 consequences could be more adequately addressed prior to adoption  
35 of a new initiative, particularly since such initiatives, once adopted,  
36 often are difficult to reverse.

37 g. Racial and ethnic impact statements are a tool to guide  
38 policymakers in proactively assessing how proposed sentencing  
39 initiatives affect racial and ethnic disparities in the criminal justice  
40 system. Similar to fiscal and environmental impact statements, they  
41 provide legislators and State agency executives with a statistical  
42 analysis of the projected impact of policy changes before legislative  
43 deliberation or rule adoption.

44 h. It is altogether fitting and proper, and in the public interest,  
45 to require racial and ethnic impact statements to be prepared for

**EXPLANATION – Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.**

**Matter underlined thus is new matter.**

1 bills, resolutions, or amendments that may result in an increase or a  
2 decrease in the State's pretrial detention, sentencing, probation, or  
3 parole populations.

4 i. It is also altogether fitting and proper, and in the public  
5 interest, to require racial and ethnic impact statements to be  
6 included in the notice of a proposed agency rule that could increase  
7 or decrease the State's pretrial detention, sentencing, probation, or  
8 parole populations.

9  
10 2. (New section) a. The Legislative Services Commission shall  
11 direct the Office of Legislative Services to prepare a racial and  
12 ethnic impact statement for each proposed criminal justice bill,  
13 resolution, or amendment that would affect pretrial detention,  
14 sentencing, probation, or parole policies in this State prior to any  
15 vote being taken on the bill, resolution, or amendment in either  
16 House of the Legislature.

17 b. The racial and ethnic impact statement required in  
18 subsection a. of this section shall include, but not be limited to, a  
19 statistical analysis of how the change in policy would affect racial  
20 and ethnic minorities.

21 c. State agencies shall make data available to the Office of  
22 Legislative Services for the purposes of preparing racial and ethnic  
23 impact statements.

24  
25 3. (New section) a. In proposing a rule for adoption, the  
26 agency involved shall issue a racial and ethnic impact statement  
27 setting forth the nature and extent of the impact of the proposed rule  
28 on pretrial detention, sentencing, probation, or parole policies in  
29 this State and how the rule would affect racial and ethnic minorities.  
30 This statement shall be included in the notice of a proposed rule as  
31 required by subsection (a) of section 4 of P.L.1968, c.410  
32 (C.52:14B-4).

33 b. During the public comment period on the proposed rule, the  
34 Criminal Sentencing and Disposition Commission established  
35 pursuant to P.L.2009, c.81 (C.2C:48A-1 et seq.) shall review the  
36 rule proposal to determine its impact on this State's pretrial  
37 detention, sentencing, probation, or parole policies in this State and  
38 how the rule would affect racial and ethnic minorities.

39 c. If the commission determines that the proposed rule may  
40 have a significant adverse impact on racial and ethnic minorities  
41 and notifies the relevant agency of that determination during the  
42 public comment period on the proposed rule, the agency shall  
43 consult with the commission prior to the adoption of the rule.

44  
45 4. Section 4 of P.L.1968, c.410 (C.52:14B-4) is amended to  
46 read as follows:

47 4. (a) Prior to the adoption, amendment, or repeal of any rule,  
48 except as may be otherwise provided, the agency shall:

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1 (1) Give at least 30 days' notice of its intended action. The  
2 notice shall include a statement of either the terms or substance of  
3 the intended action or a description of the subjects and issues  
4 involved, and the time when, the place where, and the manner in  
5 which interested persons may present their views thereon. The  
6 notice shall be mailed to all persons who have made timely requests  
7 of the agency for advance notice of its rule-making proceedings  
8 and, in addition to any other public notice required by law, shall be  
9 published in the New Jersey Register. Notice shall also be  
10 distributed to the news media maintaining a press office to cover  
11 the State House Complex, and made available for public viewing  
12 through publication on the agency's Internet website. Each agency  
13 shall additionally publicize the intended action and shall adopt rules  
14 to prescribe the manner in which it will do so. In order to inform  
15 those persons most likely to be affected by or interested in the  
16 intended action, each agency shall distribute notice of its intended  
17 action to interested persons, and shall publicize the same, through  
18 the use of an electronic mailing list or similar type of subscription-  
19 based e-mail service. Additional publicity methods that may be  
20 employed include publication of the notice in newspapers of general  
21 circulation or in trade, industry, governmental or professional  
22 publications, distribution of press releases to the news media and  
23 posting of notices in appropriate locations, including the agency's  
24 Internet website. The rules shall prescribe the circumstances under  
25 which each additional method shall be employed;

26 (2) Prepare for public distribution at the time the notice appears  
27 in the Register, and make available for public viewing through  
28 publication on the agency's Internet website, a statement setting  
29 forth a summary of the proposed rule, as well as a clear and concise  
30 explanation of the purpose and effect of the rule, the specific legal  
31 authority under which its adoption is authorized, a description of  
32 the expected socio-economic impact of the rule, a regulatory  
33 flexibility analysis, or the statement of finding that a regulatory  
34 flexibility analysis is not required, as provided in section 4 of  
35 P.L.1986, c.169 (C.52:14B-19), a jobs impact statement which shall  
36 include an assessment of the number of jobs to be generated or lost  
37 if the proposed rule takes effect, an agriculture industry impact  
38 statement as provided in section 7 of P.L.1998, c.48 (C.4:1C-10.3),  
39 **[and]** a housing affordability impact statement and a smart growth  
40 development impact statement, as provided in section 31 of  
41 P.L.2008, c.46 (C.52:14B-4.1b), and a racial and ethnic impact  
42 statement as required in section 3 of P.L. , c. (C. ) (pending  
43 before the Legislature as this bill);

44 (3) Afford all interested persons a reasonable opportunity to  
45 submit data, views, comments, or arguments, orally or in writing.  
46 The agency shall consider fully all written and oral submissions  
47 respecting the proposed rule, including any written submissions that  
48 are received by the agency through its e-mail systems or electronic

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1 mailing lists. If within 30 days of the publication of the proposed  
2 rule sufficient public interest is demonstrated in an extension of the  
3 time for submissions, the agency shall provide an additional 30-day  
4 period for the receipt of submissions by interested parties. The  
5 agency shall not adopt the proposed rule until after the end of that  
6 30-day extension.

7 The agency shall conduct a public hearing on the proposed rule  
8 at the request of a committee of the Legislature, or a governmental  
9 agency or subdivision, or if sufficient public interest is shown,  
10 provided such request is made to the agency within 30 days  
11 following publication of the proposed rule in the Register. The  
12 agency shall provide at least 15 days' notice of such hearing, shall  
13 publish such hearing notice on its Internet website, and shall  
14 conduct the hearing in accordance with the provisions of subsection  
15 (g) of this section.

16 The head of each agency shall adopt as part of its rules of  
17 practice adopted pursuant to section 3 of P.L.1968, c.410  
18 (C.52:14B-3) definite standards of what constitutes sufficient public  
19 interest for conducting a public hearing and for granting an  
20 extension pursuant to this paragraph; and

21 (4) Prepare for public distribution, and make available for public  
22 viewing through publication on the agency's Internet website, a  
23 report listing all parties offering written or oral submissions  
24 concerning the rule, summarizing the content of the submissions  
25 and providing the agency's response to the data, views, comments,  
26 and arguments contained in the submissions.

27 (b) A rule prescribing the organization of an agency may be  
28 adopted at any time without prior notice or hearing. Such rules  
29 shall be effective upon filing in accordance with section 5 of  
30 P.L.1968, c.410 (C.52:14B-5) or upon any later date specified by  
31 the agency.

32 (c) If an agency finds that an imminent peril to the public  
33 health, safety, or welfare requires adoption of a rule upon fewer  
34 than 30 days' notice and states in writing its reasons for that finding,  
35 and the Governor concurs in writing that an imminent peril exists,  
36 the agency may proceed to adopt the rule without prior notice or  
37 hearing, or upon any abbreviated notice and hearing that it finds  
38 practicable. The agency shall publish, on its Internet website, a  
39 summary of any rule adopted pursuant to this subsection, and the  
40 statement of reasons for the agency's finding that an imminent peril  
41 exists. Any rule adopted pursuant to this subsection shall be  
42 effective for a period of not more than 60 days, unless each house  
43 of the Legislature passes a resolution concurring in its extension for  
44 a period of not more than 60 additional days. The rule shall not be  
45 effective for more than 120 days unless repromulgated in  
46 accordance with normal rule-making procedures.

47 (d) No rule hereafter adopted is valid unless adopted in  
48 substantial compliance with P.L.1968, c.410 (C.52:14B-1 et seq.).

1 A proceeding to contest any rule on the ground of noncompliance  
2 with the procedural requirements of P.L.1968, c.410 (C.52:14B-1 et  
3 seq.) shall be commenced within one year from the effective date of  
4 the rule.

5 (e) An agency may file a notice of intent with respect to a  
6 proposed rule-making proceeding with the Office of Administrative  
7 Law, for publication in the New Jersey Register at any time prior to  
8 the formal notice of action required in subsection (a) of this section.  
9 The notice shall be for the purpose of eliciting the views of  
10 interested parties on an action prior to the filing of a formal rule  
11 proposal. Such notice shall be distributed to interested persons  
12 through the use of an electronic mailing list or similar type of  
13 subscription-based e-mail service, and made available for public  
14 viewing through publication on the agency's Internet website. The  
15 agency shall afford all interested persons a reasonable opportunity  
16 to submit data, views, comments, or arguments, orally or in writing,  
17 on the proposed action, and shall fully consider all written and oral  
18 submissions, including any written submissions received by the  
19 agency through its e-mail systems or electronic mailing lists. An  
20 agency may use informal conferences and consultations as means of  
21 obtaining the viewpoints and advice of interested persons with  
22 respect to contemplated rule-making. An agency may also appoint  
23 committees of experts or interested persons or representatives of the  
24 general public to advise it with respect to any contemplated rule-  
25 making.

26 (f) An interested person may petition an agency to adopt a new  
27 rule, or amend or repeal any existing rule. Such petition may be  
28 submitted to the agency through mail, e-mail, electronic mailing  
29 list, or through any other means. Each agency shall prescribe by  
30 rule the form for the petition and the procedure for the  
31 consideration and disposition of the petition. The petition shall  
32 state clearly and concisely:

33 (1) The substance or nature of the rule-making which is  
34 requested;

35 (2) The reasons for the request and the petitioner's interest in the  
36 request;

37 (3) References to the authority of the agency to take the  
38 requested action.

39 The petitioner may provide the text of the proposed new rule,  
40 amended rule or repealed rule.

41 Within 60 days following receipt by an agency of any such  
42 petition, the agency shall either: (i) deny the petition, giving a  
43 written statement of its reasons; (ii) grant the petition and initiate a  
44 rule-making proceeding within 90 days of granting the petition; or  
45 (iii) refer the matter for further deliberations which shall be  
46 concluded within 90 days of referring the matter for further  
47 deliberations. Upon conclusion of such further deliberations, the  
48 agency shall either deny the petition and provide a written statement

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1 of its reasons or grant the petition and initiate a rule-making  
2 proceeding within 90 days. Upon the receipt of the petition, the  
3 agency shall file a notice stating the name of the petitioner and the  
4 nature of the request with the Office of Administrative Law for  
5 publication in the New Jersey Register. Notice of formal agency  
6 action on such petition shall also be filed with the Office of  
7 Administrative Law for publication in the Register, and shall be  
8 made available for public viewing through publication on the  
9 agency's Internet website.

10 If an agency fails to act in accordance with the time frame set  
11 forth in the preceding paragraph, upon written request by the  
12 petitioner, the Director of the Office of Administrative Law shall  
13 order a public hearing on the rule-making petition and shall provide  
14 the agency with a notice of the director's intent to hold the public  
15 hearing if the agency does not. If the agency does not provide  
16 notice of a hearing within 15 days of the director's notice, the  
17 director shall schedule, and provide the public with a notice of, that  
18 hearing at least 15 days prior thereto. Hearing notice shall also be  
19 made available for public viewing through publication on the  
20 agency's Internet website. If the public hearing is held by the  
21 Office of Administrative Law, it shall be conducted by an  
22 administrative law judge, a person on assignment from another  
23 agency, a person from the Office of Administrative Law assigned  
24 pursuant to subsection o. of section 5 of P.L.1978, c.67 (C.52:14F-  
25 5), or an independent contractor assigned by the director. The  
26 petitioner and the agency shall participate in the public hearing and  
27 shall present a summary of their positions on the petition, a  
28 summary of the factual information on which their positions on the  
29 petition are based and shall respond to questions posed by any  
30 interested party. The hearing procedure shall otherwise be  
31 consistent with the requirements for the conduct of a public hearing  
32 as prescribed in subsection (g) of section 4 of P.L.1968, c.410  
33 (C.52:14B-4), except that the person assigned to conduct the  
34 hearing shall make a report summarizing the factual record  
35 presented and the arguments for and against proceeding with a rule  
36 proposal based upon the petition. This report shall be filed with the  
37 agency and delivered or mailed to the petitioner. A copy of the  
38 report shall be filed with the Legislature along with the petition for  
39 rule-making.

40 (g) All public hearings shall be conducted by a hearing officer,  
41 who may be an official of the agency, a member of its staff, a  
42 person on assignment from another agency, a person from the  
43 Office of Administrative Law assigned pursuant to subsection o. of  
44 section 5 of P.L.1978, c.67 (C.52:14F-5) or an independent  
45 contractor. The hearing officer shall have the responsibility to  
46 make recommendations to the agency regarding the adoption,  
47 amendment or repeal of a rule. These recommendations shall be  
48 made public. At the beginning of each hearing, or series of

1 hearings, the agency, if it has made a proposal, shall present a  
2 summary of the factual information on which its proposal is based,  
3 and shall respond to questions posed by any interested party.  
4 Hearings shall be conducted at such times and in locations which  
5 shall afford interested parties the opportunity to attend. A verbatim  
6 record of each hearing shall be maintained, and copies of the record  
7 shall be available to the public at no more than the actual cost,  
8 which shall be that of the agency where the petition for rule-making  
9 originated.

10 (cf: P.L.2013, c.259, s.4)

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12 5. This act shall take effect on the first day of the seventh  
13 month following enactment.

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#### STATEMENT

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18 This bill requires that a racial and ethnic impact statement for  
19 each proposed criminal justice bill, resolution, or amendment that  
20 would affect pretrial detention, sentencing, probation, or parole  
21 policies in this State be prepared prior to any vote being taken on  
22 the bill, resolution, or amendment in either House of the  
23 Legislature. Office of Legislative Services staff would be required  
24 to prepare the statement. The racial and ethnic impact statement is  
25 to include a statistical analysis of how the change in policy would  
26 affect racial and ethnic minorities. State agencies would be  
27 required to provide relevant data to assist the Office of Legislative  
28 Services in preparing these racial and ethnic impact statements.

29 This bill also requires all State agencies to produce a racial and  
30 ethnic impact statement for any proposed agency rule that affects  
31 pretrial detention, sentencing, probation, or parole policies. Under  
32 the bill, the proposed rule is to be reviewed by the Criminal  
33 Sentencing and Disposition Commission. If the commission  
34 determines that the proposed rule may have a significant adverse  
35 impact on racial and ethnic minorities, the rule proposing agency is  
36 to be so notified. The agency is then obligated to consult with the  
37 commission before formally adopting the rule.

38 The required racial and ethnic impact statements for agency rules  
39 affecting sentencing is to be made available to the public at the time  
40 the proposed rule appears in the New Jersey Register. Currently,  
41 State agencies are required to prepare and issue six other types of  
42 impact statements: (1) a socio-economic impact statement; (2) a  
43 regulatory flexibility analysis; (3) a jobs impact statement; (4) an  
44 agricultural industry impact statement; (5) a housing affordability  
45 impact statement; and (6) a smart growth development impact  
46 statement.



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- 1       It is the sponsor's intent that legislators and rulemakers in this
- 2       State be informed of the possible implications of new legislation or
- 3       rules for racial and ethnic minorities.