

ASSEMBLY, No. 3677

STATE OF NEW JERSEY 217th LEGISLATURE

INTRODUCED APRIL 14, 2016

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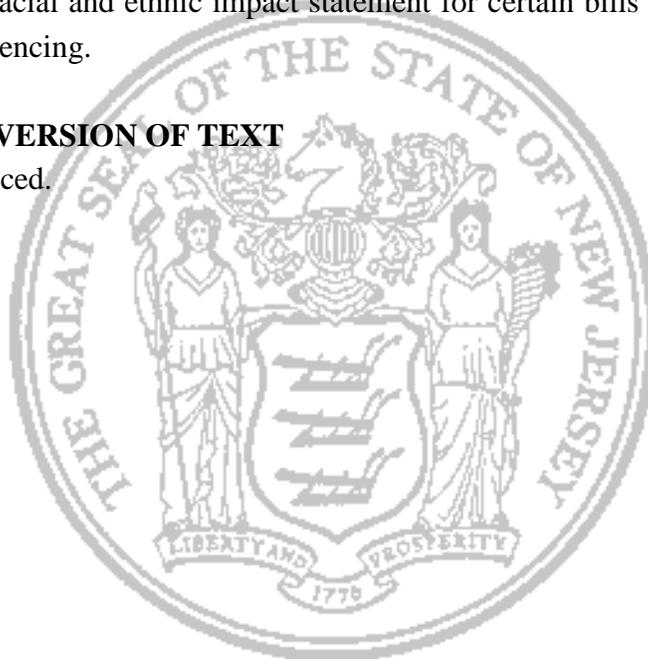
Assemblyman Johnson and Assemblywoman Jones

SYNOPSIS

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

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 1/24/2017)

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
11 shall 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:

49 (1) Give at least 30 days' notice of its intended action. The

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

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

43 (3) Afford all interested persons a reasonable opportunity to
44 submit data, views, comments, or arguments, orally or in writing.
45 The agency shall consider fully all written and oral submissions
46 respecting the proposed rule, including any written submissions that
47 are received by the agency through its e-mail systems or electronic
48 mailing lists. If within 30 days of the publication of the proposed

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

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

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

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

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

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

46 (d) No rule hereafter adopted is valid unless adopted in
47 substantial compliance with P.L.1968, c.410 (C.52:14B-1 et seq.).
48 A proceeding to contest any rule on the ground of noncompliance
49 with the procedural requirements of P.L.1968, c.410 (C.52:14B-1 et

1 seq.) shall be commenced within one year from the effective date of
2 the rule.

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

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

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

33 (2) The reasons for the request and the petitioner's interest in the
34 request;

35 (3) References to the authority of the agency to take the
36 requested action.

37 The petitioner may provide the text of the proposed new rule,
38 amended rule or repealed rule.

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

1 nature of the request with the Office of Administrative Law for
2 publication in the New Jersey Register. Notice of formal agency
3 action on such petition shall also be filed with the Office of
4 Administrative Law for publication in the Register, and shall be
5 made available for public viewing through publication on the
6 agency's Internet website.

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

37 (g) All public hearings shall be conducted by a hearing officer,
38 who may be an official of the agency, a member of its staff, a
39 person on assignment from another agency, a person from the
40 Office of Administrative Law assigned pursuant to subsection o. of
41 section 5 of P.L.1978, c.67 (C.52:14F-5) or an independent
42 contractor. The hearing officer shall have the responsibility to
43 make recommendations to the agency regarding the adoption,
44 amendment or repeal of a rule. These recommendations shall be
45 made public. At the beginning of each hearing, or series of
46 hearings, the agency, if it has made a proposal, shall present a
47 summary of the factual information on which its proposal is based,
48 and shall respond to questions posed by any interested party.
49 Hearings shall be conducted at such times and in locations which

1 shall afford interested parties the opportunity to attend. A verbatim
2 record of each hearing shall be maintained, and copies of the record
3 shall be available to the public at no more than the actual cost,
4 which shall be that of the agency where the petition for rule-making
5 originated.

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

7

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

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11

12

STATEMENT

13

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

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

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

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