

[Second Reprint]  
**SENATE, No. 677**

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**STATE OF NEW JERSEY**  
**217th LEGISLATURE**

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PRE-FILED FOR INTRODUCTION IN THE 2016 SESSION

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**Assemblywoman ANNETTE QUIJANO**

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**Co-Sponsored by:**

**Senator Ruiz, Assemblyman Johnson, Assemblywoman Jones,  
Assemblyman McKeon, Assemblywoman McKnight and Assemblyman  
Conaway**

**SYNOPSIS**

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

**CURRENT VERSION OF TEXT**

As reported by the Assembly Law and Public Safety Committee on February 27, 2017, with amendments.

(Sponsorship Updated As Of: 5/26/2017)

1 AN ACT concerning certain racial and ethnic impact statements,  
2 supplementing Title <sup>1</sup>**[1]** 52<sup>1</sup> of the Revised Statutes and Title  
3 2C of the 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; <sup>1</sup>**[38]** 37<sup>1</sup> percent of prisoners under  
22 federal and state jurisdiction at the end of <sup>1</sup>**[2010]** 2014<sup>1</sup> were  
23 black, 32 percent were white, and 22 percent were Hispanic;  
24 according to <sup>1</sup>**[2010]** 2014<sup>1</sup> United States Census data, <sup>1</sup>**[12.6]**  
25 13.2<sup>1</sup> percent of the United States population is black.

26 d. In this State, <sup>1</sup>**[61]** 60<sup>1</sup> percent of the prison population is  
27 black, <sup>1</sup>**[22]** 23<sup>1</sup> percent is white<sup>1,1</sup> and 16 percent is Hispanic;  
28 blacks make up <sup>1</sup>**[13.7]** 14.8<sup>1</sup> 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. <sup>2</sup>In New Jersey, black juveniles are 24.3 times more likely to  
32 be committed to a secure juvenile facility than their white  
33 counterparts, and almost 90 percent of youth prosecuted as adults  
34 are black or Hispanic.<sup>2</sup>

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

40 g. Racial and ethnic impact statements are <sup>2</sup>**[a tool]** tools<sup>2</sup> to  
41 guide policymakers in proactively assessing how proposed  
42 sentencing initiatives affect racial and ethnic disparities <sup>2</sup>of adults

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.

Matter enclosed in superscript numerals has been adopted as follows:

<sup>1</sup>Senate SLP committee amendments adopted June 20, 2016.

<sup>2</sup>Assembly ALP committee amendments adopted February 27, 2017.

1 and juveniles<sup>2</sup> in the criminal justice system. Similar to fiscal and  
2 environmental impact statements, they provide legislators and State  
3 agency executives with a statistical analysis of the projected impact  
4 of policy changes before legislative deliberation or rule adoption.

5 h. It is altogether fitting and proper, and in the public interest,  
6 to require racial and ethnic impact statements to be prepared for  
7 bills, resolutions, or amendments that may result in an increase or a  
8 decrease in the State's adult and juvenile<sup>2</sup> pretrial detention,  
9 sentencing, probation, or parole populations.

10 i. It is also altogether fitting and proper, and in the public  
11 interest, to require racial and ethnic impact statements to be  
12 included in the notice of a proposed agency rule that could increase  
13 or decrease the State's adult and juvenile<sup>2</sup> pretrial detention,  
14 sentencing, probation, or parole populations.

15  
16 2. (New section) a. The Legislative Services Commission shall  
17 direct the Office of Legislative Services to prepare a racial and  
18 ethnic impact statement for each proposed criminal justice bill,  
19 resolution, or amendment that would affect pretrial detention,  
20 sentencing, probation, or parole policies concerning adults and  
21 juveniles<sup>2</sup> in this State including, but not limited to, any bill,  
22 resolution, or amendment that establishes a new crime or offense;  
23 modifies a crime or offense or the penalties associated with a crime  
24 or offense established under current law; or modifies procedures  
25 under current law for sentencing, parole, or probation,<sup>2</sup> prior to any  
26 vote being taken on the bill, resolution, or amendment in either  
27 House of the Legislature.

28 b. The racial and ethnic impact statement required in  
29 subsection a. of this section shall include, but not be limited to, a  
30 statistical analysis of how the change in policy would affect racial  
31 and ethnic minorities <sup>2</sup>, the impact of the change in policy on  
32 correctional facilities and services for racial and ethnic minorities,  
33 and the estimated number of criminal and juvenile justice matters  
34 involving racial and ethnic minorities adjudicated each year<sup>2</sup> .

35 c. State agencies shall make data available to the Office of  
36 Legislative Services for the purposes of preparing racial and ethnic  
37 impact statements.

38  
39 3. (New section) a. In proposing a rule for adoption, the agency  
40 involved shall issue a racial and ethnic impact statement setting  
41 forth the nature and extent of the impact of the proposed rule on  
42 pretrial detention, sentencing, probation, or parole policies  
43 concerning adults and juveniles<sup>2</sup> in this State and how the rule  
44 would affect racial and ethnic minorities <sup>2</sup>, correctional facilities  
45 and services for racial and ethnic minorities, and the adjudication of  
46 criminal and juvenile justice matters involving racial and ethnic  
47 minorities<sup>2</sup>. This statement shall be included in the notice of a

1 proposed rule as required by subsection (a) of section 4 of  
2 P.L.1968, c.410 (C.52:14B-4).

3 b. During the public comment period on the proposed rule, the  
4 Criminal Sentencing and Disposition Commission established  
5 pursuant to P.L.2009, c.81 (C.2C:48A-1 et seq.) shall review the  
6 rule proposal to determine its impact on this State's pretrial  
7 detention, sentencing, probation, or parole policies <sup>1</sup>[in this State]<sup>1</sup>  
8 concerning adults and juveniles<sup>2</sup> and how the rule would affect  
9 racial and ethnic minorities <sup>2</sup>, correctional facilities and services  
10 for racial and ethnic minorities, and the adjudication of criminal and  
11 juvenile justice matters involving racial and ethnic minorities<sup>2</sup>.

12 c. If the commission determines that the proposed rule may  
13 have a significant adverse impact on racial and ethnic minorities <sup>2</sup>,  
14 correctional facilities and services for racial and ethnic minorities,  
15 or the adjudication of criminal and juvenile justice matters  
16 involving racial and ethnic minorities,<sup>2</sup> and <sup>2</sup>the commission<sup>2</sup>  
17 notifies the relevant agency of that determination during the public  
18 comment period on the proposed rule, the agency shall consult with  
19 the commission prior to the adoption of the rule.

20

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

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

25 (1) Give at least 30 days' notice of its intended action. The  
26 notice shall include a statement of either the terms or substance of  
27 the intended action or a description of the subjects and issues  
28 involved, and the time when, the place where, and the manner in  
29 which interested persons may present their views thereon. The  
30 notice shall be mailed to all persons who have made timely requests  
31 of the agency for advance notice of its rule-making proceedings  
32 and, in addition to any other public notice required by law, shall be  
33 published in the New Jersey Register. Notice shall also be  
34 distributed to the news media maintaining a press office to cover  
35 the State House Complex, and made available for public viewing  
36 through publication on the agency's Internet website. Each agency  
37 shall additionally publicize the intended action and shall adopt rules  
38 to prescribe the manner in which it will do so. In order to inform  
39 those persons most likely to be affected by or interested in the  
40 intended action, each agency shall distribute notice of its intended  
41 action to interested persons, and shall publicize the same, through  
42 the use of an electronic mailing list or similar type of subscription-  
43 based e-mail service. Additional publicity methods that may be  
44 employed include publication of the notice in newspapers of general  
45 circulation or in trade, industry, governmental or professional  
46 publications, distribution of press releases to the news media and  
47 posting of notices in appropriate locations, including the agency's

1 Internet website. The rules shall prescribe the circumstances under  
2 which each additional method shall be employed;

3 (2) Prepare for public distribution at the time the notice appears  
4 in the Register, and make available for public viewing through  
5 publication on the agency's Internet website, a statement setting  
6 forth a summary of the proposed rule, as well as a clear and concise  
7 explanation of the purpose and effect of the rule, the specific legal  
8 authority under which its adoption is authorized, a description of  
9 the expected socio-economic impact of the rule, a regulatory  
10 flexibility analysis, or the statement of finding that a regulatory  
11 flexibility analysis is not required, as provided in section 4 of  
12 P.L.1986, c.169 (C.52:14B-19), a jobs impact statement which shall  
13 include an assessment of the number of jobs to be generated or lost  
14 if the proposed rule takes effect, an agriculture industry impact  
15 statement as provided in section 7 of P.L.1998, c.48 (C.4:1C-10.3),  
16 **[and]** a housing affordability impact statement <sup>2</sup>**[and]** <sup>2</sup> a smart  
17 growth development impact statement, as provided in section 31 of  
18 P.L.2008, c.46 (C.52:14B-4.1b), and a racial and <sup>1</sup>**[ethnic]** ethnic<sup>1</sup>  
19 impact statement as required in section 3 of P.L. , c. (C. )  
20 (pending before the Legislature as this bill);

21 (3) Afford all interested persons a reasonable opportunity to  
22 submit data, views, comments, or arguments, orally or in writing.  
23 The agency shall consider fully all written and oral submissions  
24 respecting the proposed rule, including any written submissions that  
25 are received by the agency through its e-mail systems or electronic  
26 mailing lists. If within 30 days of the publication of the proposed  
27 rule sufficient public interest is demonstrated in an extension of the  
28 time for submissions, the agency shall provide an additional 30-day  
29 period for the receipt of submissions by interested parties. The  
30 agency shall not adopt the proposed rule until after the end of that  
31 30-day extension.

32 The agency shall conduct a public hearing on the proposed rule  
33 at the request of a committee of the Legislature, or a governmental  
34 agency or subdivision, or if sufficient public interest is shown,  
35 provided such request is made to the agency within 30 days  
36 following publication of the proposed rule in the Register. The  
37 agency shall provide at least 15 days' notice of such hearing, shall  
38 publish such hearing notice on its Internet website, and shall  
39 conduct the hearing in accordance with the provisions of subsection  
40 (g) of this section.

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

46 (4) Prepare for public distribution, and make available for public  
47 viewing through publication on the agency's Internet website, a  
48 report listing all parties offering written or oral submissions

1 concerning the rule, summarizing the content of the submissions  
2 and providing the agency's response to the data, views, comments,  
3 and arguments contained in the submissions.

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

9 (c) If an agency finds that an imminent peril to the public  
10 health, safety, or welfare requires adoption of a rule upon fewer  
11 than 30 days' notice and states in writing its reasons for that finding,  
12 and the Governor concurs in writing that an imminent peril exists,  
13 the agency may proceed to adopt the rule without prior notice or  
14 hearing, or upon any abbreviated notice and hearing that it finds  
15 practicable. The agency shall publish, on its Internet website, a  
16 summary of any rule adopted pursuant to this subsection, and the  
17 statement of reasons for the agency's finding that an imminent peril  
18 exists. Any rule adopted pursuant to this subsection shall be  
19 effective for a period of not more than 60 days, unless each house  
20 of the Legislature passes a resolution concurring in its extension for  
21 a period of not more than 60 additional days. The rule shall not be  
22 effective for more than 120 days unless repromulgated in  
23 accordance with normal rule-making procedures.

24 (d) No rule hereafter adopted is valid unless adopted in  
25 substantial compliance with P.L.1968, c.410 (C.52:14B-1 et seq.).  
26 A proceeding to contest any rule on the ground of noncompliance  
27 with the procedural requirements of P.L.1968, c.410 (C.52:14B-1 et  
28 seq.) shall be commenced within one year from the effective date of  
29 the rule.

30 (e) An agency may file a notice of intent with respect to a  
31 proposed rule-making proceeding with the Office of Administrative  
32 Law, for publication in the New Jersey Register at any time prior to  
33 the formal notice of action required in subsection (a) of this section.  
34 The notice shall be for the purpose of eliciting the views of  
35 interested parties on an action prior to the filing of a formal rule  
36 proposal. Such notice shall be distributed to interested persons  
37 through the use of an electronic mailing list or similar type of  
38 subscription-based e-mail service, and made available for public  
39 viewing through publication on the agency's Internet website. The  
40 agency shall afford all interested persons a reasonable opportunity  
41 to submit data, views, comments, or arguments, orally or in writing,  
42 on the proposed action, and shall fully consider all written and oral  
43 submissions, including any written submissions received by the  
44 agency through its e-mail systems or electronic mailing lists. An  
45 agency may use informal conferences and consultations as means of  
46 obtaining the viewpoints and advice of interested persons with  
47 respect to contemplated rule-making. An agency may also appoint  
48 committees of experts or interested persons or representatives of the

1 general public to advise it with respect to any contemplated rule-  
2 making.

3 (f) An interested person may petition an agency to adopt a new  
4 rule, or amend or repeal any existing rule. Such petition may be  
5 submitted to the agency through mail, e-mail, electronic mailing  
6 list, or through any other means. Each agency shall prescribe by  
7 rule the form for the petition and the procedure for the  
8 consideration and disposition of the petition. The petition shall  
9 state clearly and concisely:

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

12 (2) The reasons for the request and the petitioner's interest in the  
13 request;

14 (3) References to the authority of the agency to take the  
15 requested action.

16 The petitioner may provide the text of the proposed new rule,  
17 amended rule or repealed rule.

18 Within 60 days following receipt by an agency of any such  
19 petition, the agency shall either: (i) deny the petition, giving a  
20 written statement of its reasons; (ii) grant the petition and initiate a  
21 rule-making proceeding within 90 days of granting the petition; or  
22 (iii) refer the matter for further deliberations which shall be  
23 concluded within 90 days of referring the matter for further  
24 deliberations. Upon conclusion of such further deliberations, the  
25 agency shall either deny the petition and provide a written statement  
26 of its reasons or grant the petition and initiate a rule-making  
27 proceeding within 90 days. Upon the receipt of the petition, the  
28 agency shall file a notice stating the name of the petitioner and the  
29 nature of the request with the Office of Administrative Law for  
30 publication in the New Jersey Register. Notice of formal agency  
31 action on such petition shall also be filed with the Office of  
32 Administrative Law for publication in the Register, and shall be  
33 made available for public viewing through publication on the  
34 agency's Internet website.

35 If an agency fails to act in accordance with the time frame set  
36 forth in the preceding paragraph, upon written request by the  
37 petitioner, the Director of the Office of Administrative Law shall  
38 order a public hearing on the rule-making petition and shall provide  
39 the agency with a notice of the director's intent to hold the public  
40 hearing if the agency does not. If the agency does not provide  
41 notice of a hearing within 15 days of the director's notice, the  
42 director shall schedule, and provide the public with a notice of, that  
43 hearing at least 15 days prior thereto. Hearing notice shall also be  
44 made available for public viewing through publication on the  
45 agency's Internet website. If the public hearing is held by the  
46 Office of Administrative Law, it shall be conducted by an  
47 administrative law judge, a person on assignment from another  
48 agency, a person from the Office of Administrative Law assigned

1 pursuant to subsection o. of section 5 of P.L.1978, c.67 (C.52:14F-  
2 5), or an independent contractor assigned by the director. The  
3 petitioner and the agency shall participate in the public hearing and  
4 shall present a summary of their positions on the petition, a  
5 summary of the factual information on which their positions on the  
6 petition are based and shall respond to questions posed by any  
7 interested party. The hearing procedure shall otherwise be  
8 consistent with the requirements for the conduct of a public hearing  
9 as prescribed in subsection (g) of section 4 of P.L.1968, c.410  
10 (C.52:14B-4), except that the person assigned to conduct the  
11 hearing shall make a report summarizing the factual record  
12 presented and the arguments for and against proceeding with a rule  
13 proposal based upon the petition. This report shall be filed with the  
14 agency and delivered or mailed to the petitioner. A copy of the  
15 report shall be filed with the Legislature along with the petition for  
16 rule-making.

17 (g) All public hearings shall be conducted by a hearing officer,  
18 who may be an official of the agency, a member of its staff, a  
19 person on assignment from another agency, a person from the  
20 Office of Administrative Law assigned pursuant to subsection o. of  
21 section 5 of P.L.1978, c.67 (C.52:14F-5) or an independent  
22 contractor. The hearing officer shall have the responsibility to  
23 make recommendations to the agency regarding the adoption,  
24 amendment or repeal of a rule. These recommendations shall be  
25 made public. At the beginning of each hearing, or series of  
26 hearings, the agency, if it has made a proposal, shall present a  
27 summary of the factual information on which its proposal is based,  
28 and shall respond to questions posed by any interested party.  
29 Hearings shall be conducted at such times and in locations which  
30 shall afford interested parties the opportunity to attend. A verbatim  
31 record of each hearing shall be maintained, and copies of the record  
32 shall be available to the public at no more than the actual cost,  
33 which shall be that of the agency where the petition for rule-making  
34 originated.

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

36

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