

[First Reprint]

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STATE OF NEW JERSEY
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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: 3/17/2017)

1 AN ACT concerning certain racial and ethnic impact statements,
 2 supplementing Title ¹**[1]** 52¹ 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; ¹**[38]** 37¹ percent of prisoners under
 22 federal and state jurisdiction at the end of ¹**[2010]** 2014¹ were
 23 black, 32 percent were white, and 22 percent were Hispanic;
 24 according to ¹**[2010]** 2014¹ United States Census data, ¹**[12.6]**
 25 13.2¹ percent of the United States population is black.
 26 d. In this State, ¹**[61]** 60¹ percent of the prison population is
 27 black, ¹**[22]** 23¹ percent is white¹,¹ and 16 percent is Hispanic;
 28 blacks make up ¹**[13.7]** 14.8¹ 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. ¹In 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.¹
 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 ¹**[a tool]** tools¹ to
 41 guide policymakers in proactively assessing how proposed
 42 sentencing initiatives affect racial and ethnic disparities ¹of adults
 43 and juveniles¹ in the criminal justice system. Similar to fiscal and
 44 environmental impact statements, they provide legislators and State

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:

¹Assembly ALP committee amendments adopted February 27, 2017.

1 agency executives with a statistical analysis of the projected impact
2 of policy changes before legislative deliberation or rule adoption.

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

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

13
14 2. (New section) a. The Legislative Services Commission
15 shall direct the Office of Legislative Services to prepare a racial and
16 ethnic impact statement for each proposed criminal justice bill,
17 resolution, or amendment that would affect pretrial detention,
18 sentencing, probation, or parole policies 'concerning adults and
19 juveniles' in this State 'including, but not limited to, any bill,
20 resolution, or amendment that establishes a new crime or offense;
21 modifies a crime or offense or the penalties associated with a crime
22 or offense established under current law; or modifies procedures
23 under current law for sentencing, parole, or probation,' prior to any
24 vote being taken on the bill, resolution, or amendment in either
25 House of the Legislature.

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

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

36
37 3. (New section) a. In proposing a rule for adoption, the
38 agency involved shall issue a racial and ethnic impact statement
39 setting forth the nature and extent of the impact of the proposed rule
40 on pretrial detention, sentencing, probation, or parole policies
41 'concerning adults and juveniles' in this State and how the rule
42 would affect racial and ethnic minorities 'correctional facilities
43 and services for racial and ethnic minorities, and the adjudication of
44 criminal and juvenile justice matters involving racial and ethnic
45 minorities'. This statement shall be included in the notice of a
46 proposed rule as required by subsection (a) of section 4 of
47 P.L.1968, c.410 (C.52:14B-4).

1 b. During the public comment period on the proposed rule, the
2 Criminal Sentencing and Disposition Commission established
3 pursuant to P.L.2009, c.81 (C.2C:48A-1 et seq.) shall review the
4 rule proposal to determine its impact on this State's pretrial
5 detention, sentencing, probation, or parole policies ¹**[in this State]**
6 concerning adults and juveniles¹ and how the rule would affect
7 racial and ethnic minorities ¹, correctional facilities and services for
8 racial and ethnic minorities, and the adjudication of criminal and
9 juvenile justice matters involving racial and ethnic minorities¹ .

10 c. If the commission determines that the proposed rule may
11 have a significant adverse impact on racial and ethnic minorities ¹,
12 correctional facilities and services for racial and ethnic minorities,
13 or the adjudication of criminal and juvenile justice matters
14 involving racial and ethnic minorities,¹ and ¹the commission¹
15 notifies the relevant agency of that determination during the public
16 comment period on the proposed rule, the agency shall consult with
17 the commission prior to the adoption of the rule.

18
19 4. Section 4 of P.L.1968, c.410 (C.52:14B-4) is amended to
20 read as follows:

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

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

48 (2) Prepare for public distribution at the time the notice appears

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

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

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

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

43 (4) Prepare for public distribution, and make available for public
44 viewing through publication on the agency's Internet website, a
45 report listing all parties offering written or oral submissions
46 concerning the rule, summarizing the content of the submissions
47 and providing the agency's response to the data, views, comments,
48 and arguments contained in the submissions.

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

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

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

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

48 (f) An interested person may petition an agency to adopt a new
49 rule, or amend or repeal any existing rule. Such petition may be

1 submitted to the agency through mail, e-mail, electronic mailing
2 list, or through any other means. Each agency shall prescribe by
3 rule the form for the petition and the procedure for the
4 consideration and disposition of the petition. The petition shall
5 state clearly and concisely:

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

8 (2) The reasons for the request and the petitioner's interest in the
9 request;

10 (3) References to the authority of the agency to take the
11 requested action.

12 The petitioner may provide the text of the proposed new rule,
13 amended rule or repealed rule.

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

31 If an agency fails to act in accordance with the time frame set
32 forth in the preceding paragraph, upon written request by the
33 petitioner, the Director of the Office of Administrative Law shall
34 order a public hearing on the rule-making petition and shall provide
35 the agency with a notice of the director's intent to hold the public
36 hearing if the agency does not. If the agency does not provide
37 notice of a hearing within 15 days of the director's notice, the
38 director shall schedule, and provide the public with a notice of, that
39 hearing at least 15 days prior thereto. Hearing notice shall also be
40 made available for public viewing through publication on the
41 agency's Internet website. If the public hearing is held by the
42 Office of Administrative Law, it shall be conducted by an
43 administrative law judge, a person on assignment from another
44 agency, a person from the Office of Administrative Law assigned
45 pursuant to subsection o. of section 5 of P.L.1978, c.67 (C.52:14F-
46 5), or an independent contractor assigned by the director. The
47 petitioner and the agency shall participate in the public hearing and
48 shall present a summary of their positions on the petition, a
49 summary of the factual information on which their positions on the

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

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

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

31

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