

[Third Reprint]

**SENATE, No. 677**

**STATE OF NEW JERSEY**

**217th LEGISLATURE**

PRE-FILED FOR INTRODUCTION IN THE 2016 SESSION

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**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 amended on October 5, 2017 by the General Assembly pursuant to the Governor's recommendations.

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

1 AN ACT concerning certain racial and ethnic <sup>3</sup>community criminal  
 2 justice and public safety<sup>3</sup> impact statements, supplementing  
 3 Title <sup>1</sup>~~1~~ 52<sup>1</sup> of the Revised Statutes and Title 2C of the New  
 4 Jersey Statutes, and amending P.L.1968, c.410.

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

- 8  
 9 1. (New section) The Legislature finds and declares that:  
 10 a. Public policymakers are increasingly concerned with the  
 11 disparity between the number of minorities in the population and  
 12 the number incarcerated in jails and prisons.  
 13 b. Racial and ethnic disparities in America's criminal justice  
 14 system result in devastating consequences to society: offenders face  
 15 daunting employment challenges, reduced lifetime employment  
 16 earnings, and lack of access to public benefits; offenders' families  
 17 face the shame and stigma associated with incarceration, as well as  
 18 the loss of financial and emotional support of a loved one; and high  
 19 rates of recidivism and burgeoning prison system costs affect all  
 20 communities.  
 21 c. Nationally, one of every nine black males between 20 and 34  
 22 years old is incarcerated; <sup>1</sup>~~38~~ 37<sup>1</sup> percent of prisoners under  
 23 federal and state jurisdiction at the end of <sup>1</sup>~~2010~~ 2014<sup>1</sup> were  
 24 black, 32 percent were white, and 22 percent were Hispanic;  
 25 according to <sup>1</sup>~~2010~~ 2014<sup>1</sup> United States Census data, <sup>1</sup>~~12.6~~  
 26 13.2<sup>1</sup> percent of the United States population is black.  
 27 d. In this State, <sup>1</sup>~~61~~ 60<sup>1</sup> percent of the prison population is  
 28 black, <sup>1</sup>~~22~~ 23<sup>1</sup> percent is white<sup>1,1</sup> and 16 percent is Hispanic;  
 29 blacks make up <sup>1</sup>~~13.7~~ 14.8<sup>1</sup> percent of the general population.  
 30 e. Based on current trends, one of three black males born today  
 31 will serve time; the odds of Hispanic males serving time are one in  
 32 six. <sup>2</sup>In New Jersey, black juveniles are 24.3 times more likely to  
 33 be committed to a secure juvenile facility than their white  
 34 counterparts, and almost 90 percent of youth prosecuted as adults  
 35 are black or Hispanic.<sup>2</sup>  
 36 f. Criminal justice policies, while neutral on their face, often  
 37 adversely affect minority communities; these unintended  
 38 consequences could be more adequately addressed prior to adoption  
 39 of a new initiative, particularly since such initiatives, once adopted,  
 40 often are difficult to reverse.

**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.

<sup>3</sup>Assembly amendments adopted in accordance with Governor's recommendations October 5, 2017.

1 g. Racial and ethnic <sup>3</sup>community criminal justice and public  
2 safety<sup>3</sup> impact statements are <sup>2</sup>[a tool] tools<sup>2</sup> to guide policymakers  
3 in proactively assessing how proposed sentencing initiatives affect  
4 racial and ethnic disparities <sup>2</sup>of adults and juveniles<sup>2</sup> in the criminal  
5 justice system. Similar to fiscal and environmental impact  
6 statements, they provide legislators and State agency executives  
7 with a statistical analysis of the projected impact of policy changes  
8 before legislative deliberation or rule adoption.

9 h. It is altogether fitting and proper, and in the public interest,  
10 to require racial and ethnic <sup>3</sup>community criminal justice and public  
11 safety<sup>3</sup> impact statements to be prepared for bills, resolutions, or  
12 amendments that may result in an increase or a decrease in the  
13 State's <sup>2</sup>adult and juvenile<sup>2</sup> pretrial detention, sentencing,  
14 probation, or parole populations.

15 i. It is also altogether fitting and proper, and in the public  
16 interest, to require racial and ethnic <sup>3</sup>community criminal justice  
17 and public safety<sup>3</sup> impact statements to be included in the notice of  
18 a proposed agency rule that could increase or decrease the State's  
19 <sup>2</sup>adult and juvenile<sup>2</sup> pretrial detention, sentencing, probation, or  
20 parole populations.

21  
22 2. (New section) a. The Legislative Services Commission shall  
23 direct the Office of Legislative Services to prepare a racial and  
24 ethnic <sup>3</sup>community criminal justice and public safety<sup>3</sup> impact  
25 statement for each proposed criminal justice bill, resolution, or  
26 amendment that would affect pretrial detention, sentencing,  
27 probation, or parole policies <sup>2</sup>concerning adults and juveniles<sup>2</sup> in  
28 this State <sup>2</sup>including, but not limited to, any bill, resolution, or  
29 amendment that establishes a new crime or offense; modifies a  
30 crime or offense or the penalties associated with a crime or offense  
31 established under current law; or modifies procedures under current  
32 law for sentencing, parole, or probation,<sup>2</sup> prior to any vote being  
33 taken on the bill, resolution, or amendment in either House of the  
34 Legislature.

35 b. The racial and ethnic <sup>3</sup>community criminal justice and public  
36 safety<sup>3</sup> impact statement required in subsection a. of this section  
37 shall include, but not be limited to, <sup>3</sup>an assessment of the potential  
38 impact of the proposed legislation on racial and ethnic minorities,  
39 including whether it is likely to have a disproportionate or unique  
40 impact on the racial and ethnic communities in the State and the  
41 rationale, if any, for the proposed legislation having an identifiable  
42 impact on racial and ethnic persons in this State,<sup>3</sup> a statistical  
43 analysis of how the change in policy would affect racial and ethnic  
44 minorities <sup>2</sup>, the impact of the change in policy on correctional  
45 facilities and services for racial and ethnic minorities,<sup>3</sup> <sup>3</sup>[and]<sup>3</sup> the  
46 estimated number of criminal and juvenile justice matters involving

1 racial and ethnic minorities adjudicated each year<sup>2 3</sup>, and the  
2 anticipated effect of the change in policy on public safety in racial  
3 and ethnic communities in the State and for victims and potential  
4 victims in those communities<sup>3</sup>.

5 c. State agencies shall make data available to the Office of  
6 Legislative Services for the purposes of preparing racial and ethnic  
7 community criminal justice and public safety<sup>3</sup> impact statements.  
8

9 3. (New section) <sup>3</sup>[a.]<sup>3</sup> In proposing a rule for adoption, the  
10 agency involved shall issue a racial and ethnic community criminal  
11 justice and public safety<sup>3</sup> impact statement setting forth <sup>3</sup>[the  
12 nature and extent of the impact of] whether<sup>3</sup> the proposed rule <sup>3</sup>will  
13 have an impact<sup>3</sup> on pretrial detention, sentencing, probation, or  
14 parole policies <sup>2</sup>concerning adults and juveniles<sup>2</sup> in this State and <sup>3</sup>,  
15 if so,<sup>3</sup> how the rule would affect racial and ethnic minorities <sup>2</sup>,  
16 <sup>3</sup>including whether it is likely to have a disproportionate or unique  
17 impact on the racial and ethnic communities in the State and the  
18 rationale for the proposed rule having an identifiable impact on  
19 racial and ethnic persons in this State, and any anticipated impact  
20 upon<sup>3</sup> correctional facilities and services for racial and ethnic  
21 minorities, <sup>3</sup>[and]<sup>3</sup> the adjudication of criminal and juvenile justice  
22 matters involving racial and ethnic minorities<sup>2 3</sup>, and public safety  
23 in racial and ethnic communities and the victims and potential  
24 victims in those communities<sup>3</sup>. This statement shall be included in  
25 the notice of a proposed rule as required by subsection (a) of section  
26 4 of P.L.1968, c.410 (C.52:14B-4).

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

36 c. If the commission determines that the proposed rule may  
37 have a significant adverse impact on racial and ethnic minorities <sup>2</sup>,  
38 correctional facilities and services for racial and ethnic minorities,  
39 or the adjudication of criminal and juvenile justice matters  
40 involving racial and ethnic minorities,<sup>2</sup> and <sup>2</sup>the commission<sup>2</sup>  
41 notifies the relevant agency of that determination during the public  
42 comment period on the proposed rule, the agency shall consult with  
43 the commission prior to the adoption of the rule.]<sup>3</sup>  
44

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

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

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

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

47 (3) Afford all interested persons a reasonable opportunity to  
48 submit data, views, comments, or arguments, orally or in writing.

1 The agency shall consider fully all written and oral submissions  
2 respecting the proposed rule, including any written submissions that  
3 are received by the agency through its e-mail systems or electronic  
4 mailing lists. If within 30 days of the publication of the proposed  
5 rule sufficient public interest is demonstrated in an extension of the  
6 time for submissions, the agency shall provide an additional 30-day  
7 period for the receipt of submissions by interested parties. The  
8 agency shall not adopt the proposed rule until after the end of that  
9 30-day extension.

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

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

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

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

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

1 accordance with normal rule-making procedures.

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

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

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

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

38 (2) The reasons for the request and the petitioner's interest in the  
39 request;

40 (3) References to the authority of the agency to take the  
41 requested action.

42 The petitioner may provide the text of the proposed new rule,  
43 amended rule or repealed rule.

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

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

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

43 (g) All public hearings shall be conducted by a hearing officer,  
44 who may be an official of the agency, a member of its staff, a  
45 person on assignment from another agency, a person from the  
46 Office of Administrative Law assigned pursuant to subsection o. of  
47 section 5 of P.L.1978, c.67 (C.52:14F-5) or an independent  
48 contractor. The hearing officer shall have the responsibility to



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

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

14

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