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GOVERNOR'S PRESS RELEASE ON SIGNING: No

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RH/CL

Title 2C.
Subtitle 3.
Chapter 48B.
(New)
Racial and Ethnic
Disparity
§§1,3 -
C.2C:48B-1 &
2C:48B-2
§2 - C.52:11-57.1
§5 - Note

P.L. 2017, CHAPTER 286, *approved January 16, 2018*
Senate, No. 677 (*Third Reprint*)

1 AN ACT concerning certain racial and ethnic ³community criminal
2 justice and public safety³ impact statements, supplementing
3 Title ¹~~1~~ 52¹ 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; ¹~~38~~ 37¹ percent of prisoners under
23 federal and state jurisdiction at the end of ¹~~2010~~ 2014¹ were
24 black, 32 percent were white, and 22 percent were Hispanic;
25 according to ¹~~2010~~ 2014¹ United States Census data, ¹~~12.6~~
26 13.2¹ percent of the United States population is black.

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:

¹Senate SLP committee amendments adopted June 20, 2016.

²Assembly ALP committee amendments adopted February 27, 2017.

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

- 1 d. In this State, ¹~~61~~ 60¹ percent of the prison population is
2 black, ¹~~22~~ 23¹ percent is white^{1,1}, and 16 percent is Hispanic;
3 blacks make up ¹~~13.7~~ 14.8¹ percent of the general population.
- 4 e. Based on current trends, one of three black males born today
5 will serve time; the odds of Hispanic males serving time are one in
6 six. ²In New Jersey, black juveniles are 24.3 times more likely to
7 be committed to a secure juvenile facility than their white
8 counterparts, and almost 90 percent of youth prosecuted as adults
9 are black or Hispanic.²
- 10 f. Criminal justice policies, while neutral on their face, often
11 adversely affect minority communities; these unintended
12 consequences could be more adequately addressed prior to adoption
13 of a new initiative, particularly since such initiatives, once adopted,
14 often are difficult to reverse.
- 15 g. Racial and ethnic ³community criminal justice and public
16 safety³ impact statements are ²[a tool] tools² to guide policymakers
17 in proactively assessing how proposed sentencing initiatives affect
18 racial and ethnic disparities ²of adults and juveniles² in the criminal
19 justice system. Similar to fiscal and environmental impact
20 statements, they provide legislators and State agency executives
21 with a statistical analysis of the projected impact of policy changes
22 before legislative deliberation or rule adoption.
- 23 h. It is altogether fitting and proper, and in the public interest,
24 to require racial and ethnic ³community criminal justice and public
25 safety³ impact statements to be prepared for bills, resolutions, or
26 amendments that may result in an increase or a decrease in the
27 State's ²adult and juvenile² pretrial detention, sentencing,
28 probation, or parole populations.
- 29 i. It is also altogether fitting and proper, and in the public
30 interest, to require racial and ethnic ³community criminal justice
31 and public safety³ impact statements to be included in the notice of
32 a proposed agency rule that could increase or decrease the State's
33 ²adult and juvenile² pretrial detention, sentencing, probation, or
34 parole populations.
- 35
- 36 2. (New section) a. The Legislative Services Commission shall
37 direct the Office of Legislative Services to prepare a racial and
38 ethnic ³community criminal justice and public safety³ impact
39 statement for each proposed criminal justice bill, resolution, or
40 amendment that would affect pretrial detention, sentencing,
41 probation, or parole policies ²concerning adults and juveniles² in
42 this State ²including, but not limited to, any bill, resolution, or
43 amendment that establishes a new crime or offense; modifies a
44 crime or offense or the penalties associated with a crime or offense
45 established under current law; or modifies procedures under current
46 law for sentencing, parole, or probation,² prior to any vote being

1 taken on the bill, resolution, or amendment in either House of the
2 Legislature.

3 b. The racial and ethnic ³community criminal justice and public
4 safety³ impact statement required in subsection a. of this section
5 shall include, but not be limited to, ³an assessment of the potential
6 impact of the proposed legislation on racial and ethnic minorities,
7 including whether it is likely to have a disproportionate or unique
8 impact on the racial and ethnic communities in the State and the
9 rationale, if any, for the proposed legislation having an identifiable
10 impact on racial and ethnic persons in this State,³ a statistical
11 analysis of how the change in policy would affect racial and ethnic
12 minorities ², the impact of the change in policy on correctional
13 facilities and services for racial and ethnic minorities, ³[and]³ the
14 estimated number of criminal and juvenile justice matters involving
15 racial and ethnic minorities adjudicated each year^{2 3}, and the
16 anticipated effect of the change in policy on public safety in racial
17 and ethnic communities in the State and for victims and potential
18 victims in those communities³.

19 c. State agencies shall make data available to the Office of
20 Legislative Services for the purposes of preparing racial and ethnic
21 ³community criminal justice and public safety³ impact statements.
22

23 3. (New section) ³[a.]³ In proposing a rule for adoption, the
24 agency involved shall issue a racial and ethnic ³community criminal
25 justice and public safety³ impact statement setting forth ³[the
26 nature and extent of the impact of] whether³ the proposed rule ³will
27 have an impact³ on pretrial detention, sentencing, probation, or
28 parole policies ²concerning adults and juveniles² in this State and ³,
29 if so,³ how the rule would affect racial and ethnic minorities ²,
30 ³including whether it is likely to have a disproportionate or unique
31 impact on the racial and ethnic communities in the State and the
32 rationale for the proposed rule having an identifiable impact on
33 racial and ethnic persons in this State, and any anticipated impact
34 upon³ correctional facilities and services for racial and ethnic
35 minorities, ³[and]³ the adjudication of criminal and juvenile justice
36 matters involving racial and ethnic minorities^{2 3}, and public safety
37 in racial and ethnic communities and the victims and potential
38 victims in those communities³. This statement shall be included in
39 the notice of a proposed rule as required by subsection (a) of section
40 4 of P.L.1968, c.410 (C.52:14B-4).

41 ³[b. During the public comment period on the proposed rule, the
42 Criminal Sentencing and Disposition Commission established
43 pursuant to P.L.2009, c.81 (C.2C:48A-1 et seq.) shall review the
44 rule proposal to determine its impact on this State's pretrial
45 detention, sentencing, probation, or parole policies ¹[in this State]¹
46 ²concerning adults and juveniles² and how the rule would affect

1 racial and ethnic minorities ², correctional facilities and services
2 for racial and ethnic minorities, and the adjudication of criminal and
3 juvenile justice matters involving racial and ethnic minorities².

4 c. If the commission determines that the proposed rule may
5 have a significant adverse impact on racial and ethnic minorities ²,
6 correctional facilities and services for racial and ethnic minorities,
7 or the adjudication of criminal and juvenile justice matters
8 involving racial and ethnic minorities,² and ²the commission²
9 notifies the relevant agency of that determination during the public
10 comment period on the proposed rule, the agency shall consult with
11 the commission prior to the adoption of the rule.】³

12
13 4. Section 4 of P.L.1968, c.410 (C.52:14B-4) is amended to
14 read as follows:

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

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

42 (2) Prepare for public distribution at the time the notice appears
43 in the Register, and make available for public viewing through
44 publication on the agency's Internet website, a statement setting
45 forth a summary of the proposed rule, as well as a clear and concise
46 explanation of the purpose and effect of the rule, the specific legal
47 authority under which its adoption is authorized, a description of
48 the expected socio-economic impact of the rule, a regulatory

1 flexibility analysis, or the statement of finding that a regulatory
2 flexibility analysis is not required, as provided in section 4 of
3 P.L.1986, c.169 (C.52:14B-19), a jobs impact statement which shall
4 include an assessment of the number of jobs to be generated or lost
5 if the proposed rule takes effect, an agriculture industry impact
6 statement as provided in section 7 of P.L.1998, c.48 (C.4:1C-10.3),
7 **[and]** a housing affordability impact statement ²**[and]** ²a smart
8 growth development impact statement, as provided in section 31 of
9 P.L.2008, c.46 (C.52:14B-4.1b), and a racial and ¹**[ethnic]** ethnic¹
10 ³community criminal justice and public safety³ impact statement as
11 required in section 3 of P.L. , c. (C.) (pending before the
12 Legislature as this bill);

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

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

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

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

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

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

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

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

43 (f) An interested person may petition an agency to adopt a new
44 rule, or amend or repeal any existing rule. Such petition may be
45 submitted to the agency through mail, e-mail, electronic mailing
46 list, or through any other means. Each agency shall prescribe by
47 rule the form for the petition and the procedure for the
48 consideration and disposition of the petition. The petition shall

1 state clearly and concisely:

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

4 (2) The reasons for the request and the petitioner's interest in the
5 request;

6 (3) References to the authority of the agency to take the
7 requested action.

8 The petitioner may provide the text of the proposed new rule,
9 amended rule or repealed rule.

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

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

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

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

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

28

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

31

32

33

34

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

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.



S677 RICE

2

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:

S677 RICE

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)

11

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

14

15

16

STATEMENT

17

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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9

- 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.

SENATE LAW AND PUBLIC SAFETY COMMITTEE

STATEMENT TO

SENATE, No. 677

with committee amendments

STATE OF NEW JERSEY

DATED: JUNE 20, 2016

The Senate Law and Public Safety Committee reports favorably and with committee amendments Senate Bill No. 677.

As amended and reported by the committee, this bill requires that a racial and ethnic impact statement for each proposed criminal justice bill, resolution, or amendment that would affect pretrial detention, sentencing, probation, or parole policies in this State be prepared prior to any vote being taken on the bill, resolution, or amendment in either House of the Legislature. Office of Legislative Services staff would be required to prepare the statement. The racial and ethnic impact statement is to include a statistical analysis of how the change in policy would affect racial and ethnic minorities. State agencies would be required to provide relevant data to assist the Office of Legislative Services in preparing these racial and ethnic impact statements.

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

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

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

This bill was pre-filed for introduction in the 2016-2017 session pending technical review. As reported, the bill includes the changes required by technical review, which has been performed.

COMMITTEE AMENDMENTS

The committee amended the bill to make technical changes, including updating the statistics concerning certain demographics of incarcerated individuals.

ASSEMBLY LAW AND PUBLIC SAFETY COMMITTEE

STATEMENT TO

[First Reprint]

SENATE, No. 677

with committee amendments

STATE OF NEW JERSEY

DATED: FEBRUARY 27, 2017

The Assembly Law and Public Safety Committee reports favorably and with committee amendments Assembly Bill No. 677 (1R).

As amended and reported by the committee, Senate Bill No. 677 (1R) requires that a racial and ethnic impact statement be prepared for each proposed criminal justice bill, resolution, or amendment, and any rule proposed for adoption, amendment, or repeal that would affect pretrial detention, sentencing, probation, or parole policies concerning adults and juveniles in this State. The amended bill requires these statements to be issued prior to any vote being taken on a bill or the adoption of a rule.

The amended bill requires Office of Legislative Services staff to prepare a racial and ethnic impact statement for a bill, which is to include a statistical analysis of how the change in policy would affect racial and ethnic minorities, the impact of the change in policy on correctional facilities and services, and the estimated number of criminal and juvenile justice matters involving racial and ethnic minorities adjudicated each year. State agencies would be required to provide relevant data to assist the Office of Legislative Services in preparing these statements.

An agency required under the amended bill to issue a racial and ethnic impact statement is required to set forth the nature and extent of the impact of the proposed rule on pretrial detention, sentencing, probation, or parole policies and how the rule would affect racial and ethnic minorities, correctional facilities and services, and the adjudication of criminal and juvenile justice matters involving racial and ethnic minorities. The amended bill requires the Criminal Sentencing and Disposition Commission to review the proposed rule. If the commission determines that the proposed rule may have a significant adverse impact on racial and ethnic minorities, the rule proposing agency is to be notified and the agency is then obligated to consult with the commission before formally adopting the rule.

The required racial and ethnic impact statements for agency rules affecting sentencing are to be made available to the public at the time the proposed rules appear in the New Jersey Register. Currently, State

agencies are required to prepare and issue six other types of impact statements: (1) a socio-economic impact statement; (2) a regulatory flexibility analysis; (3) a jobs impact statement; (4) an agricultural industry impact statement; (5) a housing affordability impact statement; and (6) a smart growth development impact statement.

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

As amended and reported by the committee, Senate Bill No. 677 (1R) is identical to Assembly Bill No. 3677, also amended and reported by the committee on this date.

COMMITTEE AMENDMENTS

The committee amended the bill:

- 1) To update the statistics concerning certain demographics of incarcerated individuals;
- 2) To clarify that a racial and ethnic impact statement required under the bill is to address policies that concern juveniles, in addition to adults, in this State;
- 3) As introduced, the bill required that a racial and ethnic impact statement be prepared for a proposed criminal justice bill, resolution, or amendment that would affect pretrial detention, sentencing, probation, or parole policies in this State. The amendments specify that a statement also is to be prepared for any bill, resolution, or amendment that establishes a new crime or offense; modifies a crime or the penalties associated with a crime under current law; or modifies procedures under current law for sentencing, parole, or probation;
- 4) As introduced, the bill required a racial and ethnic impact statement issued for a bill to include, but not be limited to, a statistical analysis of how the change in policy would affect racial and ethnic minorities. The amendments require the statement also to include the impact of the change in policy on correctional facilities and services, and the estimated number of criminal and juvenile justice matters involving racial and ethnic minorities adjudicated each year;
- 5) As introduced, the bill required a racial and ethnic impact statement issued for a proposed rule change to set forth the impact of the proposed rule on pretrial detention, sentencing, probation, or parole policies and how the rule would affect racial and ethnic minorities. The amendments require the statement also to address how the rule would affect correctional facilities and services, and the adjudication of criminal and juvenile justice matters involving racial and ethnic minorities; and
- 6) To make technical changes to the bill.

ASSEMBLY, No. 3677

STATE OF NEW JERSEY 217th LEGISLATURE

INTRODUCED APRIL 14, 2016

Sponsored by:

Assemblyman BENJIE E. WIMBERLY

District 35 (Bergen and Passaic)

Assemblyman TROY SINGLETON

District 7 (Burlington)

Assemblywoman L. GRACE SPENCER

District 29 (Essex)

Assemblyman JAMEL C. HOLLEY

District 20 (Union)

Assemblywoman CLEOPATRA G. TUCKER

District 28 (Essex)

Co-Sponsored by:

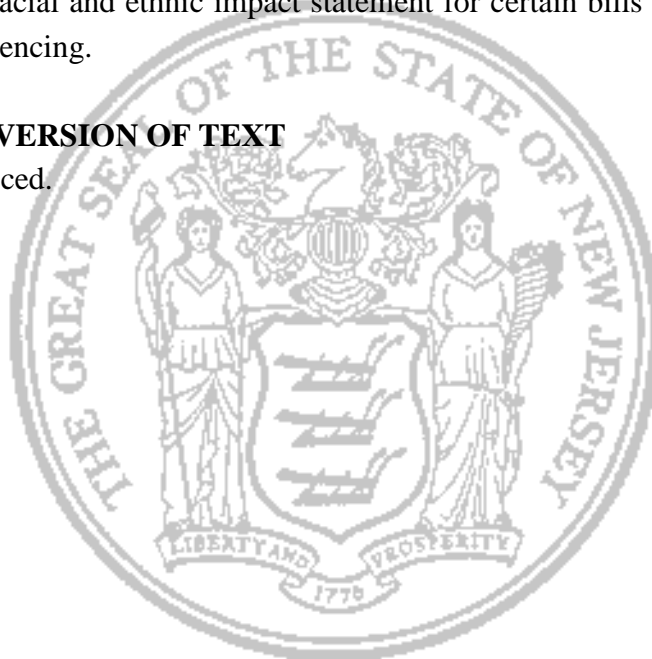
Assemblyman Johnson and Assemblywoman Jones

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.

10

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.

ASSEMBLY LAW AND PUBLIC SAFETY COMMITTEE

STATEMENT TO

ASSEMBLY, No. 3677

with committee amendments

STATE OF NEW JERSEY

DATED: FEBRUARY 27, 2017

The Assembly Law and Public Safety Committee reports favorably and with committee amendments Assembly Bill No. 3677.

As amended and reported by the committee, Assembly Bill No. 3677 requires that a racial and ethnic impact statement be prepared for each proposed criminal justice bill, resolution, or amendment, and any rule proposed for adoption, amendment, or repeal that would affect pretrial detention, sentencing, probation, or parole policies concerning adults and juveniles in this State. The amended bill requires these statements to be issued prior to any vote being taken on a bill or the adoption of a rule.

The amended bill requires Office of Legislative Services staff to prepare a racial and ethnic impact statement for a bill, which is to include a statistical analysis of how the change in policy would affect racial and ethnic minorities, the impact of the change in policy on correctional facilities and services, and the estimated number of criminal and juvenile justice matters involving racial and ethnic minorities adjudicated each year. State agencies would be required to provide relevant data to assist the Office of Legislative Services in preparing these statements.

An agency required under the amended bill to issue a racial and ethnic impact statement is required to set forth the nature and extent of the impact of the proposed rule on pretrial detention, sentencing, probation, or parole policies and how the rule would affect racial and ethnic minorities, correctional facilities and services, and the adjudication of criminal and juvenile justice matters involving racial and ethnic minorities. The amended bill requires the Criminal Sentencing and Disposition Commission to review the proposed rule. If the commission determines that the proposed rule may have a significant adverse impact on racial and ethnic minorities, the rule proposing agency is to be notified and the agency is then obligated to consult with the commission before formally adopting the rule.

The required racial and ethnic impact statements for agency rules affecting sentencing are to be made available to the public at the time the proposed rules appear in the New Jersey Register. Currently, State agencies are required to prepare and issue six other types of impact statements: (1) a socio-economic impact statement; (2) a regulatory

flexibility analysis; (3) a jobs impact statement; (4) an agricultural industry impact statement; (5) a housing affordability impact statement; and (6) a smart growth development impact statement.

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

As amended and reported by the committee, Assembly Bill No. 3677 is identical to Senate Bill No. 677 (1R), also amended and reported by the committee on this date.

COMMITTEE AMENDMENTS

The committee amended the bill:

- 1) To include additional statistics concerning certain demographics of incarcerated individuals;
- 2) To clarify that a racial and ethnic impact statement required under the bill is to address policies that concern juveniles, in addition to adults, in this State;
- 3) As introduced, the bill required that a racial and ethnic impact statement be prepared for a proposed criminal justice bill, resolution, or amendment that would affect pretrial detention, sentencing, probation, or parole policies in this State. The amendments specify that a statement also is to be prepared for any bill, resolution, or amendment that establishes a new crime or offense; modifies a crime or the penalties associated with a crime under current law; or modifies procedures under current law for sentencing, parole, or probation;
- 4) As introduced, the bill required a racial and ethnic impact statement issued for a bill to include, but not be limited to, a statistical analysis of how the change in policy would affect racial and ethnic minorities. The amendments require the statement also to include the impact of the change in policy on correctional facilities and services, and the estimated number of criminal and juvenile justice matters involving racial and ethnic minorities adjudicated each year;
- 5) As introduced, the bill required a racial and ethnic impact statement issued for a proposed rule change to set forth the impact of the proposed rule on pretrial detention, sentencing, probation, or parole policies and how the rule would affect racial and ethnic minorities. The amendments require the statement also to address how the rule would affect correctional facilities and services, and the adjudication of criminal and juvenile justice matters involving racial and ethnic minorities; and
- 6) To make technical changes to the bill.

SENATE BILL NO. 677
(Second Reprint)

To the Senate:

Pursuant to Article V, Section I, Paragraph 14 of the New Jersey Constitution, I am returning Senate Bill No. 677 (Second Reprint) with my recommendations for reconsideration.

This bill would require a racial and ethnic impact statement for each proposed criminal justice bill, resolution, or amendment that would affect pretrial detention, sentencing, probation, or parole policies in this State prior to any legislative vote. The bill also requires a similar racial and ethnic impact statement for any proposed regulation affecting criminal justice.

I recognize the broad body of research showing that racial and ethnic minority populations can be disproportionately affected by the criminal justice system in the United States, and I fully support any measure that will combat those disproportionate effects, seeking to ensure that New Jersey laws apply equally to all citizens. In fact, in an effort to promote racial and ethnic equality in the application of criminal justice, I signed a bill requiring cultural sensitivity training for all of the State's police officers. Moreover, the Office of the Attorney General has implemented many programs, including: directives on defining and prohibiting racial profiling; guidelines for preparing and conducting photo and live lineup identification procedures; implicit bias training for prosecutors; measures to foster uniformity in sentencing, such as the Brimage Guidelines; cultural diversity training, including courses provided through the Attorney General's Community-Law Enforcement Affirmative Relations (CLEAR) Continuing Education Institute; assessments conducted by the Office of Law Enforcement Professional Standards of officer

arrests, searches, seizures, and motor vehicle stops to identify and monitor any potential disparity in law enforcement; and mandatory interactive bias intimidation crime training, among other things.

I agree with the sponsors that this is an important measure that will provide thoughtful consideration and valuable information in the process of changing laws related to criminal justice. However, to provide a thorough analysis of any potential bill or rule affecting criminal justice, I am recommending technical changes that will require not only the examination of the racial and ethnic impact of proposed measures, but also evaluation of whether the measures will have a disparate or unique impact on racial and ethnic minorities and the underlying rationale for any such impact. Additionally, these changes will effectuate a complete analysis to assess the broader public safety impact on the affected racial and ethnic communities and the impact of the measures on the victims and potential victims in those communities. This will ensure that a more holistic understanding of the impact of the bill or rule will be provided to lawmakers. Finally, the suggested changes will safeguard the rulemaking process, protecting against changes to the process that could lead to an overly burdensome procedure for State agencies.

Accordingly, I herewith return Senate Bill No. 677 (Second Reprint) and recommend that it be amended as follows:

<u>Page 2, Title, Line 1:</u>	After "ethnic"	insert
	"community criminal	justice
	and public safety"	
<u>Page 2, Section 1, Line 40:</u>	After "ethnic"	insert
	"community criminal	justice
	and public safety"	
<u>Page 3, Section 1, Line 6:</u>	After "ethnic"	insert
	"community criminal	justice
	and public safety"	

- Page 3, Section 1, Line 11: After "ethnic" insert "community criminal justice and public safety"
- Page 3, Section 2, Line 18: After "ethnic" insert "community criminal justice and public safety"
- Page 3, Section 2, Line 28: After "ethnic" insert "community criminal justice and public safety"
- Page 3, Section 2, Line 29: After "to," insert "an assessment of the potential impact of the proposed legislation on racial and ethnic minorities, including whether it is likely to have a disproportionate or unique impact on the racial and ethnic communities in the State and the rationale, if any, for the proposed legislation having an identifiable impact on racial and ethnic persons in this State,"
- Page 3, Section 2, Line 33: Before "the" delete "and"
- Page 3, Section 2, Line 34: After "year" insert ", and the anticipated effect of the change in policy on public safety in racial and ethnic communities in the State and for victims and potential victims in those communities"
- Page 3, Section 2, Line 36: After "ethnic" insert "community criminal justice and public safety"
- Page 3, Section 3, Line 39: Delete "a."
- Page 3, Section 3, Line 40: After "ethnic" insert "community criminal justice and public safety"
- Page 3, Section 3, Line 41: Delete "the nature and extent of the impact of" and insert "whether"
- Page 3, Section 3, Line 41: After "rule" insert "will have an impact"
- Page 3, Section 3, Line 43: After "State and" insert ", if so,"
- Page 3, Section 3, Line 44: After "minorities," insert "including whether it is likely to have a disproportionate or unique impact on the racial and ethnic communities in the State and the rationale for the proposed rule having an identifiable impact on racial and ethnic persons in this State, and any anticipated impact upon"

Page 3, Section 3, Line 45: After "minorities," delete "and"

Page 3, Section 3, Line 47: After "minorities" insert ", and public safety in racial and ethnic communities and the victims and potential victims in those communities"

Page 4, Section 3, Lines 3-19: Delete in their entirety

Page 5, Section 4, Line 18: After "ethnic" insert "community criminal justice and public safety"

Respectfully,

[seal

/s/ Chris Christie

Governor

Attest:

/s/ Robert L. Garrenger

Acting Chief Counsel to the Governor