STATE OF NEW YORK

3422

2019-2020 Regular Sessions

IN ASSEMBLY

January 29, 2019

Introduced by M. of A. WALKER -- read once and referred to the Committee on Governmental Operations

AN ACT to amend the legislative law, in relation to racial and ethnic impact statements on bills

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. This act shall be known and may be cited as the "racial and ethnic equity act of 2019".

§ 2. Legislative findings and intent. The legislature finds that minorities are historically overrepresented in the New York correctional population and that adverse racial disparities occur at every stage of the criminal justice system. Black people are dramatically overrepresented in New York's correctional population. In 2015, they accounted for only 17.6 percent of the state's total population. Yet, as of January 2016, black people made up 49 percent of the total offender population under custody. Latinos are also overrepresented in the correctional population. In 2015, they accounted for 18.8 percent of the state population and, in 2016, just under a quarter of the offender population under custody. While the state of New York has effectively reduced the total prison population through the adoption of alternative to incarceration programs and other forms of diversion, the racially disparate correctional population remains an indefatigable aspect of the justice system. The role of New York State Permanent Commission on Sentencing is to evaluate sentencing laws and practices and recommend reforms that will improve the quality and effectiveness of statewide sentencing policy; however, this entity does not evaluate the role of sentencing statutes on racial and ethnic minorities.

In New York State, black children are overrepresented at each stage of the child welfare process. Additionally, Black, Hispanic and Native American children have higher rates of involvement in each stage of the child welfare system than white children.

EXPLANATION--Matter in *italics* (underscored) is new; matter in brackets [-] is old law to be omitted.

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A plausible cause of the continued racial disparities is the enactment of criminal justice, public benefits, and social welfare legislation without review of the potential impacts on minority populations. Race-neutral legislation can have adverse disparate effects on minority groups in practice. New York State can remedy this through requiring racial ethnic impact statements for all legislation that will potentially increase the correctional population, create a new offense, change the penalty for an existing offense, change the existing sentencing, parole or probation procedures, increase the child welfare population, and change social service laws as they relate to access to public assistance.

§ 3. The legislative law is amended by adding three new sections 52-a, 52-b and 52-c to read as follows:

§ 52-a. Racial and ethnic impact statements on qualifying bills. 1. As used in this section:

(a) The term "affected population" shall mean the correctional population, the public assistance population, or the child welfare population.

(b) The term "correctional population" shall mean the population of persons incarcerated in, but not limited to, prison, jail, or facilities operated by the office of children and family services, and persons supervised in the community including, but not limited to, persons on probation, parole, post-release supervision, or persons supervised by the office of children and family services.

(c) The term "public assistance population" shall mean all persons who receive public assistance or welfare including, but not limited to, family assistance, safety net assistance, veteran assistance, medical assistance for needy persons, institutional care for adults and child-care.

(d) The term "child" shall mean a person actually or apparently under the age of eighteen years old.

(e) The term "child welfare population" shall mean children placed in out-of-home care, foster care, or kinship care.

(f) The term "impact statement" shall mean a racial and ethnic impact statement.

(g) The term "minorities" shall mean persons who are members of one of the following groups:

(i) Black persons having origins in any of the black African racial groups:

(ii) Hispanic persons of Mexican, Puerto Rican, Dominican, Cuban, Central or South American of either Indian or Hispanic origin, regardless of race;

(iii) Native American or Alaskan native persons having origins in any of the original peoples of North America; and

(iv) Asian and Pacific Islander persons having origins in any of the far east countries, South East Asia, the Indian subcontinent or the Pacific Islands.

(h) The term "qualifying bill" shall mean any bill or amendment to a bill filed in or after the effective date of this section which may affect the racial and ethnic composition of an affected population.

2. Before qualifying bills may be considered by a senate or assembly committee, the chair of the senate or assembly committee shall cause the bill to be referred to the division of criminal justice services for preparation of an impact statement:

(a) The division of criminal justice services, in consultation with the division of juvenile justice and opportunities for youth, shall

prepare, for each qualifying bill relating to criminal or juvenile law, an impact statement clearly detailing the estimated effect such bill will have on the racial and ethnic composition of the correctional population;

(b) The budget, finance and data management and analysis division, within the office of temporary and disability insurance, shall prepare, for each qualifying bill relating to public assistance or welfare, an impact statement clearly detailing the estimated effect such bill will have on the racial and ethnic composition of the public assistance population; and/or

(c) The office of children and family services, in consultation with the bureau of strategic partnerships and collaboration, shall prepare, for each qualifying bill relating to child welfare, out-of-home care, foster care, or kinship care, an impact statement clearly detailing the estimated effect such bill will have on the racial and ethnic composition of the child welfare population.

3. In determining the racial and ethnic impacts of a bill, the division of criminal justice services and bureau of data management and analysis shall, at a minimum, estimate such impacts on the basis of:

(a) Whether and the extent to which the bill would have a disparate impact on minorities within an affected population and an explanation of that impact;

(b) The expected impact on each minority;

(c) The impact of the qualifying bill upon:

(i) Correctional facilities;

(ii) Public assistance recipients; or

(iii) Children in out-of-home care, foster care, or kinship care; and

(d) Other matters deemed relevant to the qualifying bill.

4. The impact statement must include the source or sources of data relied upon to determine the estimated impacts. Such data sources must include, but are not limited to:

(a) Criminal justice statistics from the division of criminal justice services for qualifying bills relating to criminal or juvenile law;

(b) Resources and data from the office of temporary and disability assistance for qualifying bills relating to public assistance or welfare; and/or

(c) Data and information from the following groups: state and local agencies, including the office of children and family services, the office of court administration, the office of the New York city criminal justice coordinator, the New York city administration for children's services and the New York city police department.

5. Estimated or actual racial and ethnic impacts disclosed under this section shall be reported at statistical comparisons in the form of rate per ten thousand or one hundred thousand people, number of people, share of population, or any other appropriate, convenient or accessible unit or units of measurement.

6. The impact statement shall, at a minimum, reflect the racial and ethnic impact on an affected population for no less than three fiscal years following adoption of such bill.

7. If the estimates contained in an impact statement are inaccurate, such inaccuracies shall not affect, impair, or invalidate such bill.

8. An impact statement required to be prepared under this section shall be made and shall remain a part of the bill it describes, and shall be affixed to the bill before it is laid upon the members' desks for consideration, in committee or on the senate or assembly floor, and the governor's desk for approval.

9. (a) If a senate or assembly bill is called up for final passage in the senate or assembly and an impact statement is required by subdivision two of this section and has not been provided by the division of criminal justice services or the bureau of data management and analysis, the presiding officer of the senate or house of representatives shall cause the bill to be referred to the division of criminal justice services or the bureau of data management and analysis for the preparation of an impact statement, which shall be filed with the presiding officer and affixed to the bill at least five days prior to the bill again being called up for final passage.

(b) Such bill shall not be called back up for final action until a racial impact statement has been filed with the presiding officer.

§ 52-b. Impact statements indicating disparate adverse impacts on minorities. 1. (a) If an impact statement, as defined in section fifty-two-a of this article, indicates a disparate adverse impact on minorities, as defined in section fifty-two-a of this article, the sponsor of the bill shall consider whether the bill may be amended to achieve its purpose with a lessened impact on minorities.

(b) If a bill is amended to lessen its adverse impact on minorities, the sponsor of the bill shall identify in writing, in the bill and as an appendix to the impact statement, the methodology used to lessen the impact on minorities in the amended proposal.

2. If the sponsor of the bill elects not to amend the bill or if the impact statement for an amended bill continues to indicate a disparate adverse impact on minorities, the sponsor of the bill shall:

(a) Withdraw the bill; or

(b) Identify in writing, in the bill and in an appendix to the impact statement, his or her reasoning for proceeding with the bill despite the disparate impact.

§ 52-c. Notice of proposed racial and ethnic impact statement. 1. Impact statements, as defined in section fifty-two-a of this article, shall be made available to the public in the same manner that the text of bills are made available to the public.

2. Prior to affixing an impact statement to a bill, the proposed impact statement shall be published and the public shall be afforded an opportunity to submit comments on it.

3. The notice of a proposed impact statement must be published at least thirty days prior to the first committee vote on the bill.

4. If an impact statement pursuant to subdivision eight of section fifty-two-a of this article is not provided until a bill is first called up for final passage the notice of a proposed impact statement must be published at least five days prior to the bill being called again for final passage in the senate or assembly.

§ 4. This act shall take effect immediately.