

# STATE OF NEW YORK

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3422

2019-2020 Regular Sessions

## IN ASSEMBLY

January 29, 2019

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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:

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

3 § 2. Legislative findings and intent. The legislature finds that  
4 minorities are historically overrepresented in the New York correctional  
5 population and that adverse racial disparities occur at every stage of  
6 the criminal justice system. Black people are dramatically overrepre-  
7 sented in New York's correctional population. In 2015, they accounted  
8 for only 17.6 percent of the state's total population. Yet, as of Janu-  
9 ary 2016, black people made up 49 percent of the total offender popu-  
10 lation under custody. Latinos are also overrepresented in the correc-  
11 tional population. In 2015, they accounted for 18.8 percent of the state  
12 population and, in 2016, just under a quarter of the offender population  
13 under custody. While the state of New York has effectively reduced the  
14 total prison population through the adoption of alternative to incarcer-  
15 ation programs and other forms of diversion, the racially disparate  
16 correctional population remains an indefatigable aspect of the justice  
17 system. The role of New York State Permanent Commission on Sentencing is  
18 to evaluate sentencing laws and practices and recommend reforms that  
19 will improve the quality and effectiveness of statewide sentencing poli-  
20 cy; however, this entity does not evaluate the role of sentencing stat-  
21 utes on racial and ethnic minorities.

22 In New York State, black children are overrepresented at each stage of  
23 the child welfare process. Additionally, Black, Hispanic and Native  
24 American children have higher rates of involvement in each stage of the  
25 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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1 A plausible cause of the continued racial disparities is the enactment  
2 of criminal justice, public benefits, and social welfare legislation  
3 without review of the potential impacts on minority populations. Race-  
4 neutral legislation can have adverse disparate effects on minority  
5 groups in practice. New York State can remedy this through requiring  
6 racial ethnic impact statements for all legislation that will potential-  
7 ly increase the correctional population, create a new offense, change  
8 the penalty for an existing offense, change the existing sentencing,  
9 parole or probation procedures, increase the child welfare population,  
10 and change social service laws as they relate to access to public  
11 assistance.

12 § 3. The legislative law is amended by adding three new sections 52-a,  
13 52-b and 52-c to read as follows:

14 § 52-a. Racial and ethnic impact statements on qualifying bills. 1.  
15 As used in this section:

16 (a) The term "affected population" shall mean the correctional popu-  
17 lation, the public assistance population, or the child welfare popu-  
18 lation.

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

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

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

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

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

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

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

40 (ii) Hispanic persons of Mexican, Puerto Rican, Dominican, Cuban,  
41 Central or South American of either Indian or Hispanic origin, regard-  
42 less of race;

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

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

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

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

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

1 prepare, for each qualifying bill relating to criminal or juvenile law,  
2 an impact statement clearly detailing the estimated effect such bill  
3 will have on the racial and ethnic composition of the correctional popu-  
4 lation;

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

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

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

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

23 (b) The expected impact on each minority;

24 (c) The impact of the qualifying bill upon:

25 (i) Correctional facilities;

26 (ii) Public assistance recipients; or

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

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

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

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

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

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

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

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

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

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

1 9. (a) If a senate or assembly bill is called up for final passage in  
2 the senate or assembly and an impact statement is required by subdivi-  
3 sion two of this section and has not been provided by the division of  
4 criminal justice services or the bureau of data management and analysis,  
5 the presiding officer of the senate or house of representatives shall  
6 cause the bill to be referred to the division of criminal justice  
7 services or the bureau of data management and analysis for the prepara-  
8 tion of an impact statement, which shall be filed with the presiding  
9 officer and affixed to the bill at least five days prior to the bill  
10 again being called up for final passage.

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

13 § 52-b. Impact statements indicating disparate adverse impacts on  
14 minorities. 1. (a) If an impact statement, as defined in section fifty-  
15 two-a of this article, indicates a disparate adverse impact on minori-  
16 ties, as defined in section fifty-two-a of this article, the sponsor of  
17 the bill shall consider whether the bill may be amended to achieve its  
18 purpose with a lessened impact on minorities.

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

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

26 (a) Withdraw the bill; or

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

30 § 52-c. Notice of proposed racial and ethnic impact statement. 1.  
31 Impact statements, as defined in section fifty-two-a of this article,  
32 shall be made available to the public in the same manner that the text  
33 of bills are made available to the public.

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

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

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

44 § 4. This act shall take effect immediately.