

STATE OF NEW YORK

4388

2019-2020 Regular Sessions

IN SENATE

March 11, 2019

Introduced by Sens. PARKER, SEPULVEDA -- read twice and ordered printed,
and when printed to be committed to the Committee on Investigations
and Government 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 Assem-
bly, 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

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

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1 American children have higher rates of involvement in each stage of the
2 child welfare system than white children.

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

14 § 3. The legislative law is amended by adding three new sections 52-a,
15 52-b and 52-c to read as follows:

16 § 52-a. Racial and ethnic impact statements on qualifying bills. 1.
17 As used in this section:

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

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

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

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

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

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

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

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

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

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

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

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

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

1 (a) The division of criminal justice services, in consultation with
2 the division of juvenile justice and opportunities for youth, shall
3 prepare, for each qualifying bill relating to criminal or juvenile law,
4 an impact statement clearly detailing the estimated effect such bill
5 will have on the racial and ethnic composition of the correctional popu-
6 lation;

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

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

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

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

25 (b) The expected impact on each minority;

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

27 (i) Correctional facilities;

28 (ii) Public assistance recipients; or

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

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

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

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

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

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

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

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

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

54 8. An impact statement required to be prepared under this section
55 shall be made and shall remain a part of the bill it describes, and
56 shall be affixed to the bill before it is laid upon the members' desks

1 for consideration, in committee or on the senate or assembly floor, and
2 the governor's desk for approval.

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

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

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

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

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

28 (a) Withdraw the bill; or

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

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

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

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

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

46 § 4. This act shall take effect immediately.