

CHAPTER 286

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

BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

C.2C:48B-1 Findings, declarations relative to certain racial and ethnic impact statements.

1. The Legislature finds and declares that:

a. Public policymakers are increasingly concerned with the disparity between the number of minorities in the population and the number incarcerated in jails and prisons.

b. Racial and ethnic disparities in America's criminal justice system result in devastating consequences to society: offenders face daunting employment challenges, reduced lifetime employment earnings, and lack of access to public benefits; offenders' families face the shame and stigma associated with incarceration, as well as the loss of financial and emotional support of a loved one; and high rates of recidivism and burgeoning prison system costs affect all communities.

c. Nationally, one of every nine black males between 20 and 34 years old is incarcerated; 37 percent of prisoners under federal and state jurisdiction at the end of 2014 were black, 32 percent were white, and 22 percent were Hispanic; according to 2014 United States Census data, 13.2 percent of the United States population is black.

d. In this State, 60 percent of the prison population is black, 23 percent is white, and 16 percent is Hispanic; blacks make up 14.8 percent of the general population.

e. Based on current trends, one of three black males born today will serve time; the odds of Hispanic males serving time are one in six. In New Jersey, black juveniles are 24.3 times more likely to be committed to a secure juvenile facility than their white counterparts, and almost 90 percent of youth prosecuted as adults are black or Hispanic.

f. Criminal justice policies, while neutral on their face, often adversely affect minority communities; these unintended consequences could be more adequately addressed prior to adoption of a new initiative, particularly since such initiatives, once adopted, often are difficult to reverse.

g. Racial and ethnic community criminal justice and public safety impact statements are tools to guide policymakers in proactively assessing how proposed sentencing initiatives affect racial and ethnic disparities of adults and juveniles in the criminal justice system. Similar to fiscal and environmental impact statements, they provide legislators and State agency executives with a statistical analysis of the projected impact of policy changes before legislative deliberation or rule adoption.

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

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

C.52:11-57.1 Preparation of racial and ethnic impact statements for certain proposed legislation.

2. a. The Legislative Services Commission shall direct the Office of Legislative Services to prepare a racial and ethnic community criminal justice and public safety impact statement

for each proposed criminal justice bill, resolution, or amendment that would affect pretrial detention, sentencing, probation, or parole policies concerning adults and juveniles in this State including, but not limited to, any bill, resolution, or amendment that establishes a new crime or offense; modifies a crime or offense or the penalties associated with a crime or offense established under current law; or modifies procedures under current law for sentencing, parole, or probation, prior to any vote being taken on the bill, resolution, or amendment in either House of the Legislature.

b. The racial and ethnic community criminal justice and public safety impact statement required in subsection a. of this section shall include, but not be limited to, 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, 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 for racial and ethnic minorities, the estimated number of criminal and juvenile justice matters involving racial and ethnic minorities adjudicated each year, 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.

c. State agencies shall make data available to the Office of Legislative Services for the purposes of preparing racial and ethnic community criminal justice and public safety impact statements.

C.2C:48B-2 Racial and ethnic impact statement for certain proposed rules.

3. In proposing a rule for adoption, the agency involved shall issue a racial and ethnic community criminal justice and public safety impact statement setting forth whether the proposed rule will have an impact on pretrial detention, sentencing, probation, or parole policies concerning adults and juveniles in this State and, if so, how the rule would affect 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 for the proposed rule having an identifiable impact on racial and ethnic persons in this State, and any anticipated impact upon correctional facilities and services for racial and ethnic minorities, the adjudication of criminal and juvenile justice matters involving racial and ethnic minorities, and public safety in racial and ethnic communities and the victims and potential victims in those communities. This statement shall be included in the notice of a proposed rule as required by subsection (a) of section 4 of P.L.1968, c.410 (C.52:14B-4).

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

C.52:14B-4 Adoption, amendment, repeal of rules.

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

(1) Give at least 30 days' notice of its intended action. The notice shall include a statement of either the terms or substance of the intended action or a description of the subjects and issues involved, and the time when, the place where, and the manner in which interested persons may present their views thereon. The notice shall be mailed to all persons who have made timely requests of the agency for advance notice of its rule-making proceedings and, in addition to any other public notice required by law, shall be published in the New Jersey Register. Notice shall also be distributed to the news media maintaining a

press office to cover the State House Complex, and made available for public viewing through publication on the agency's Internet website. Each agency shall additionally publicize the intended action and shall adopt rules to prescribe the manner in which it will do so. In order to inform those persons most likely to be affected by or interested in the intended action, each agency shall distribute notice of its intended action to interested persons, and shall publicize the same, through the use of an electronic mailing list or similar type of subscription-based e-mail service. Additional publicity methods that may be employed include publication of the notice in newspapers of general circulation or in trade, industry, governmental or professional publications, distribution of press releases to the news media and posting of notices in appropriate locations, including the agency's Internet website. The rules shall prescribe the circumstances under which each additional method shall be employed;

(2) Prepare for public distribution at the time the notice appears in the Register, and make available for public viewing through publication on the agency's Internet website, a statement setting forth a summary of the proposed rule, as well as a clear and concise explanation of the purpose and effect of the rule, the specific legal authority under which its adoption is authorized, a description of the expected socio-economic impact of the rule, a regulatory flexibility analysis, or the statement of finding that a regulatory flexibility analysis is not required, as provided in section 4 of P.L.1986, c.169 (C.52:14B-19), a jobs impact statement which shall include an assessment of the number of jobs to be generated or lost if the proposed rule takes effect, an agriculture industry impact statement as provided in section 7 of P.L.1998, c.48 (C.4:1C-10.3), a housing affordability impact statement, a smart growth development impact statement, as provided in section 31 of P.L.2008, c.46 (C.52:14B-4.1b), and a racial and ethnic community criminal justice and public safety impact statement as required in section 3 of P.L.2017, c.286 (C.2C:48B-2);

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

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

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

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

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

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

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

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

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

- (1) The substance or nature of the rule-making which is requested;
- (2) The reasons for the request and the petitioner's interest in the request;
- (3) References to the authority of the agency to take the requested action.

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

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

shall either deny the petition and provide a written statement of its reasons or grant the petition and initiate a rule-making proceeding within 90 days. Upon the receipt of the petition, the agency shall file a notice stating the name of the petitioner and the nature of the request with the Office of Administrative Law for publication in the New Jersey Register. Notice of formal agency action on such petition shall also be filed with the Office of Administrative Law for publication in the Register, and shall be made available for public viewing through publication on the agency's Internet website.

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

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

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

Approved January 16, 2018.