



**THE  
SENTENCING  
PROJECT**

RESEARCH AND ADVOCACY FOR REFORM

# **Testimony of Nicole D. Porter**

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Rhode Island House Bill 5763 –  
an Equity Impact Statement Act

Before the House Committee on State  
Government and Elections

March 17, 2023

Established in 1986, The Sentencing Project advocates for effective and humane responses to crime that minimize imprisonment and criminalization of youth and adults by promoting racial, ethnic, economic, and gender justice. We are grateful for this opportunity to submit testimony supporting House Bill 5763. We thank State Representative Kislak for her primary sponsorship on this bill.

I am Nicole D. Porter, Senior Director of Advocacy for The Sentencing Project. I have had extensive engagement in public policy research on criminal justice issues for many years, with a particular focus on sentencing, incarceration, and racial disparity. I have authored numerous journal articles and public commentary on these issues, and I have previously been invited to testify before state legislative bodies in a number of states on equity impact statement legislation including Maine, Virginia and Texas.

HB 5763 provides a straightforward opportunity to inform policy making through the adoption of equity impact statements. The measure adds the expectation of an equity impact statement in the legislative process to inform legislators of potential consequences of policies that may have a disproportionate impact on historically disadvantaged populations prior to enacting new legislation.

### **Changing Policies to Address Disparities**

HB 5763 would improve policymaking for proposed sentencing laws and other laws impacting criminal justice law and policy by informing law makers of the potential impact on racial justice and racial disparities in a system known to perpetuate and expand such disparities.

Nine states – Iowa, Colorado, Connecticut, Florida, Oregon, Maine, Maryland, New Jersey and Virginia – have implemented mechanisms for the preparation and consideration of racial impact statements; in addition, the Minnesota Sentencing Guidelines Commission develops racial impact statements without statutory guidance and Washington D.C. officials established an equity impact statement policy. In recent years, legislators in several states<sup>1</sup> have introduced legislation to adopt equity impact statements.

### **Rhode Island's Prison Population**

Rhode Island's prison population has declined by nearly 49% since its peak in 2008.<sup>2</sup> Black Americans are incarcerated in state prisons across the country at nearly five times the rate of whites, and Latinx individuals are 1.3 times as likely to be incarcerated than non-Latinx whites.<sup>3</sup> Black Rhode Islanders are incarcerated at a rate six-to-one compared to whites, while Latinx residents are incarcerated at a rate that is nearly two-to-one compared to whites. As of 2019, Black people comprise 6% of the state's population but 25% of the prison population.<sup>4</sup>

### **Implementation of Equity Impact Statements**

Under HB 5763, legislative sponsors are required to ensure bills are submitted with an equity impact statement. This provision aligns with practices to facilitate the development and publication of equity impact statements in other states. Officials in states with established equity impact statement policies enacted practices to inform lawmaking. Equity impact statement policies are key to acknowledging the persistence of racial disparity in sentencing law and policy making. Following the adoption of equity impact statements three steps are important to challenge racial disparities in criminal legal policies.

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<sup>1</sup> During 2023, Arizona, Nebraska, New York, Pennsylvania, and Tennessee have pending racial impact statement legislation while Arkansas, Texas, Vermont and Wisconsin have introduced racial impact statement bills in previous legislative sessions.

<sup>2</sup> Ghandnoosh, N. (2023). Ending 50 Years of Mass Incarceration: Urgent Reform Needed to Protect Future Generations. The Sentencing Project.

<sup>3</sup> Nellis, A. (2021). The Color of Justice Racial and Ethnic Disparity in State Prisons. The Sentencing Project.

<sup>4</sup> Ibid.

- First, a commitment by lawmakers to ensure bills are submitted with equity impact statements as governed by HB 5763.
- Second, a commitment by lawmakers to review the statements to inform policy making and the consideration of proposed sentencing laws.
- Third, a commitment by lawmakers to leverage equity impact statements in law and policy discussions with justice stakeholders (i.e. formerly incarcerated advocates and their family, criminal legal system practitioners, victim's groups, faith leaders, and others) when discussing and reviewing public safety policy proposals and their potential impact on Rhode Island's criminal legal system.

Equity impact statements should be viewed as a mechanism to help guide the development of sound and fair law and policy, but they are not an impediment to enacting changes in the law. They represent one component of the discussion regarding sentencing policy along with other relevant considerations.

In order to see how this might play out in the legislative arena, consider a sentencing change adopted without discussion of its racially disparate impact. Legislators in Rhode Island concerned with an increase in drug use enhanced criminal sanctions for persons arrested near schools, parks, and childcare centers. The equity impact statement might have provided data indicating that Black residents would be disproportionately affected by such a change, most likely as a result of the disproportionate effect of these policies because of the densely populated neighborhoods where many Black residents reside. The equity impact statement could result in a deliberative process that surfaces other solutions to reduce drug use. Those solutions might include public health centered initiatives with primary care doctors to recognize increases in drug use and connect patients to community-based treatment prior to police contact.

For policymakers the question then becomes how to evaluate solutions in the context of public safety goals produced through arrests and additional years of imprisonment that may disproportionately impact Black residents. Reasonable people may disagree on how to answer this question, but the equity impact statement should surface the relevant questions.

### **Recommendations for House Bill 5763**

HB 5763 is a step in the right direction. The Sentencing Project has tracked proposed and enacted equity impact statements since 2008. Recommended provisions could include:

- Retroactive application of equity impact statements. To undo the racial and ethnic disparity resulting from decades of punitive policies, however, states should also repeal existing racially biased laws and policies. The impact of equity impact laws will be modest at best if they are only prospective;
- Designate responsibility to develop equity impact statements. HB 5763 requires bill sponsors to ensure an equity impact statement is included with the bill. Some states like Maine, Oregon, and Virginia require nonpartisan agencies to develop equity impact statements. States like Connecticut and Maryland partner with universities to develop equity impact statements for pending legislation; and
- Publish annual report highlighting published equity impact statements and outcomes of pending or enacted legislation covered by the statement.

### **The Promise of Equity Impact Statements**

While proposed changes in sentencing policies are the most obvious decision-making point at which unwarranted racial disparities might emerge, a host of policy decisions at other stages of the criminal legal system can affect the racial/ethnic demographics of the prison population as well. These include adjustments to sentencing guidelines, discretionary safety valves applied to mandatory time served requirements, “truth in sentencing” and other policies that affect length of stay in prison, parole release and revocation policies. Conceivably, an equity impact statement policy could cover one or more of these decision-making points.

### **Equity impact Statements: One Step Towards Racial Justice**

Issues of race and justice permeate American society, but nowhere are they as profound as in the criminal legal system. Racial and ethnic disparities result from a complex set of factors, many beyond the purview of the criminal justice system. But state officials have an opportunity, and an obligation, to ensure that their laws, policies and practices do not exacerbate disparities. Indeed, wise leaders must actively seek to end racial disparities and promote racial justice in their communities. Equity impact statements offer one means by which state officials can begin to engage in a proactive assessment of how to address these challenging issues in a constructive and proactive way.

The Sentencing Project supports House Bill 5763 and is eager to see it advanced by the House Committee on State Government and Elections.