



RESEARCH AND ADVOCACY FOR REFORM

**Testimony of Nicole D. Porter  
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The Sentencing Project**

**In support of Legislative Bill 54,  
*a Racial Impact Statement Act***

**Before the Executive Board**

**January 27, 2023**

Established in 1986, The Sentencing Project works for a fair and effective U.S. criminal legal system by promoting reforms in sentencing policy and addressing racial injustice in the criminal legal system. We are grateful for this opportunity to submit testimony endorsing Legislative Bill 54. We thank Senator Terrell McKinney for his leadership on this bill, and we are especially heartened to see a prompt hearing for the bill early in the present legislative session.

I am Nicole D. Porter, Senior Director of Advocacy for The Sentencing Project. I have had extensive engagement in public policy research on criminal legal 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 racial impact statement legislation including Virginia and Texas.

LB 54 provides a straightforward opportunity to inform policy making through the adoption of racial impact statements. The measure directs the office of Legislative Research to provide racial impact statements for proposed laws relating to the criminal legal and youth justice system. The bill would govern a process summarizing the estimated impact of a legislative bill on racial and ethnic communities to measure the estimated impact of existing or potential racial disparities.

## **CHANGING POLICIES TO ADDRESS DISPARITIES**

LB 54 would improve policymaking for proposed sentencing laws and other laws impacting criminal legal law and policy by informing legislators 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. In recent years, legislators in several states<sup>1</sup> have introduced legislation to adopt racial impact statements policies.

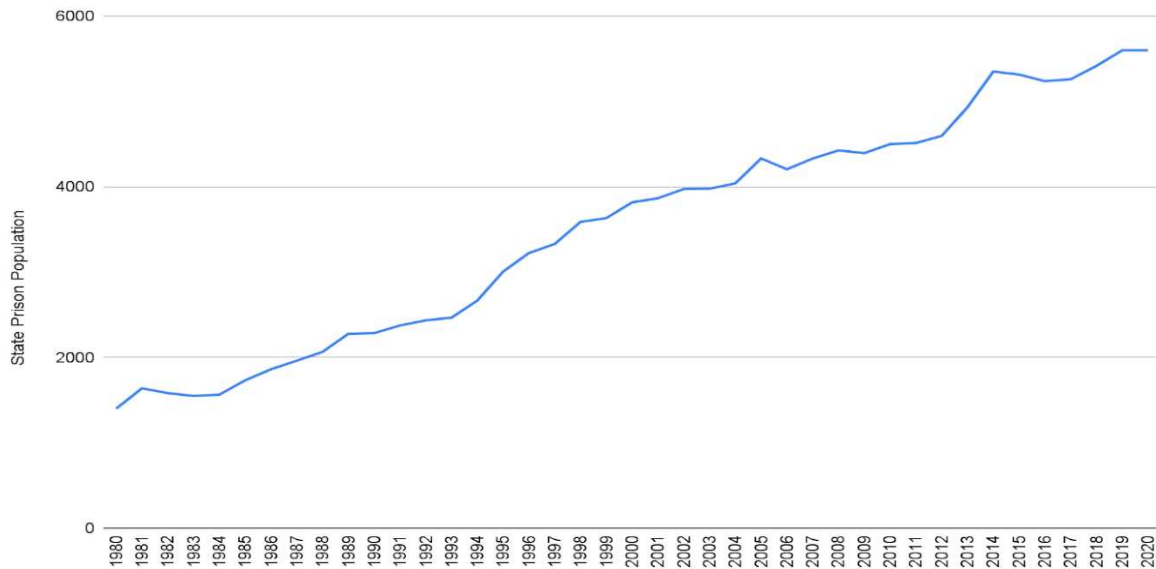
## **NEBRASKA’S PRISON POPULATION GROWTH**

While prison population growth has slowed or even reversed in most states in the past 10 years due to sentencing reforms and early release mechanisms, Nebraska is one of only 4 states that has *increased* its prison population, now holding roughly four times the number of prisoners it had in 1980. Nebraska is the second-most overcrowded prison system in the United States.<sup>2</sup>

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<sup>1</sup> Currently, New York, Pennsylvania, and Rhode Island 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> Krause, A. (2021). [Mass Incarceration in Nebraska: Data and historical analysis 1980-2020](#).



## NEBRASKA IMPRISONS BLACK RESIDENTS AT EXTREME RATES

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. In Nebraska, the ratio is 9-to-1, one of the highest in the nation. Compared to whites, Nebraska incarcerates Latinx individuals at a rate of two-to-one. Black people comprise 5% of the state's population but 28% of the prison population. Whites, who comprise almost 90% of the state population, make up half the prison population. Available research such as that published by the University of Nebraska Omaha's Center for Public Affairs Research finds that African Americans are sharply overrepresented at the point of arrest and whites are *underrepresented* at the point of arrest in comparison to their share of the general population.<sup>3</sup>

## IMPLEMENTATION OF RACIAL IMPACT STATEMENTS

Under LB 54, requests for racial impact statements would be developed by the office of Legislative Research. This provision aligns with best practices in implementing racial impact statements in other states. State legislative research offices routinely produce fiscal and other analyses of legislative initiatives, and are likewise delegated to produce racial impact statements.

Racial impact statement policies are key to acknowledging the persistence of racial disparity in sentencing law and policymaking and to identify clear actions to minimize and eventually remove those disparities.

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<sup>3</sup> Staff (2020), "Racial and Ethnic Disparities in Nebraska's Criminal Justice System," University of Nebraska Omaha's Center for Public Affairs Research, accessed January 21, 2022.

Following the adoption of racial impact statements three steps are important to challenge racial disparities in criminal legal policies.

- First, a commitment by lawmakers to request the statements as outlined in LB 54.
- 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 racial impact statements in law and policy discussions with justice stakeholders (ranging from formerly incarcerated advocates and their family, criminal legal practitioners, victim's groups, faith leaders, and others) when discussing and reviewing public safety policy proposals and their potential impact on Nebraska's criminal legal system.

Racial 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. That is, they represent one component of the discussion regarding sentencing policy, but only in conjunction with other relevant considerations. In some cases, lawmakers might receive analyses indicating that white residents or other racial/ethnic groups would be disproportionately impacted by a proposed sentencing change, but conclude that public safety concerns override these 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 Indiana concerned with an increase in drug use enhanced criminal sanctions for persons arrested near schools, parks, and childcare centers. The racial impact statement might have provided data indicating that African Americans would be disproportionately affected by such a change, most likely as a result of the disproportionate effect of these policies, despite equity in drug use, because of the densely populated urban areas where African Americans are more likely to reside. If so, then lawmakers need to assess the concern about exacerbating racial disparity with the goal of providing greater public safety. The racial impact statement could result in a deliberative process that surfaces other solutions to reduce drug use. Those policy 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 public safety risks and police contact.

For policy makers the question then becomes how to evaluate solutions in the context of public safety goals produced through additional years of imprisonment that disproportionately impacts Black residents compared to prioritizing public resources in health initiatives including drug treatment and other effective interventions. Reasonable people may disagree on how to answer this question, but the racial impact statement should surface the relevant questions.

## **THE POTENTIAL OF RACIAL 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, and “early” release mechanisms, such as participation in drug treatment or other programs. Conceivably, a racial impact statement policy could cover one or more of these decision-making points.

### **RACIAL 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 legal 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. Racial 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 applauds LB 54 and is eager to see it advanced by the Executive Board.