

February 21, 2021

The Honorable Justin E. Fairfax
Virginia Lieutenant Governor
P.O. Box 1195
Richmond, VA 23218

Re: Support for House Bill 1990, a Racial Impact Statement Bill

Lt. Governor Fairfax:

The Sentencing Project, a national criminal justice research and advocacy organization, applauds the Virginia's House Bill 1999, a Racial Impact Statement Act. **Racial impact statements** are a tool for lawmakers to evaluate potential disparities of proposed legislation prior to adoption and implementation. Analogous to fiscal **impact statements**, they assist legislators in detecting unforeseen policy ramifications. HB 1990 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.

Six states – Iowa, Colorado, Connecticut, Florida, Oregon, and New Jersey – 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 states¹ have introduced legislation to adopt racial impact statements policies.

DATA OFFERS CLEAR EVIDENCE OF RACIAL DISPARITIES

Virginia is among 12 states found by The Sentencing Project to have prison population that is more than fifty percent Black. Also, in Virginia, 1 in 27 men is in prison. The effects of high rates of imprisonment go beyond the experience of prison itself, and have broad consequences for both the justice involved resident and the community.²

A prison term results in barriers to employment including reduced lifetime earnings, and restrictions on access to various public benefits. Families of incarcerated residents themselves experience the shame and stigma of incarceration, as well as the loss of financial and emotional support with a loved one behind bars. And for the community at large, the challenges of reentry result in high rates of recidivism, extraction of social and political capital, and the consequent costs a too large prison system.

IMPLEMENTATION OF RACIAL IMPACT STATEMENTS

Under HB 1990, requests for racial impact statements would be submitted to the JLARC. This provision aligns with best practices in implementing racial impact statements in other states. Many state legislative analysts routinely produce fiscal and other analyses of legislative initiatives, and are delegated to

¹ Currently, Maine, Nebraska, and Oklahoma have pending racial impact statement legislation. Other states that have introduced racial impact statements in recent years include Kentucky, Texas, and Wisconsin and other states.

² A. Nellis, *The Color of Justice: Racial and Ethnic Disparity in State Prisons*, The Sentencing Project, Washington DC (2016).

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

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 outline in HB 1990. Second, reviewing the statements to inform policymaking 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 justice practitioners, victim's groups, faith leaders, and others on public safety policy proposals and their impact on Virginia's justice 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.

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.

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 justice 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. 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 HB 1990 and urges the Legislature to pass House Bill 1990.

Sincerely,



Nicole D. Porter
Director of Advocacy