



RESEARCH AND ADVOCACY FOR REFORM

**Testimony of Nicole D. Porter
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**In support of LD 2, An Act to Require the
Inclusion of Racial Impact Statements in the
Legislative Process**

**Before the Joint Standing Committee on
State and Local Government**

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Established in 1986, The Sentencing Project works for a fair and effective U.S. criminal justice 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 LD 2. We thank Representative Talbot Ross for her leadership on this bill, and we are especially heartened to see a prompt hearing following the bill early introduction in the present legislative session.

My name is Nicole D. Porter I am Nicole D. Porter, 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 including Nebraska, Kentucky, and Virginia.

LD 2 provides a straightforward opportunity to inform policy making to create a framework for racial impact statements in Maine. The measure sets up a process to review legislation to see what impact it would have on historically disadvantaged racial populations. First, the bill would allow legislative committees to ask for, and receive, data necessary to assess a bill's potential impact on racial and ethnic minorities. Second, the bill sets up a process to study and pilot racial impact statements in the short legislative session in 2022. Lastly, it instructs the elected leadership of the legislature to assess the pilot project and recommend a plan to the next legislature to either expand or eliminate the use of racial impact statements.

CHANGING POLICIES TO ADDRESS DISPARITIES

LD 2 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.

DATE OFFERS CLEAR EVIDENCE OF RACIAL DISPARITIES

Maine is among several states found by The Sentencing Project to have prison population where the number of Black persons imprisoned exceeds representation in the general population: more than 7% of Maine's prison population is Black compared to 13% in the general population.² The effects

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).

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.³

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 LD 2, would allow legislative committees to ask for, and receive, data necessary to assess a bill's potential impact on racial and ethnic minorities. Second, the bill sets up a process to study and pilot racial impact statements in the short legislative session in 2022.

These provisions align 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 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 LD 2. 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 Maine'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.

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

³ Ibid.

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 justice 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 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 LD 2 and is eager to see it advance in this Committee.