

Department of Legislative Services
Maryland General Assembly
2016 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 168 (Delegate Valentino-Smith, *et al.*)
Rules and Executive Nominations

General Assembly - Fiscal Notes - Criminal Justice Policy Impact Statements

This bill requires a fiscal and policy note for a bill to include a criminal justice policy impact statement under specified circumstances. The bill specifies the information that must be included, to the extent the information is available.

Fiscal Summary

State Effect: To the extent that the Department of Legislative Services (DLS) does not have to collect any data that is not readily available or conduct any new analyses of a bill's effect on racial and ethnic groups, it can carry out the bill's requirements with existing budgeted resources. The Judiciary and State agencies can provide readily available information with existing budgeted resources.

Local Effect: The bill's requirements can be handled with existing budgeted resources.

Small Business Effect: None.

Analysis

Bill Summary: A fiscal and policy note must include a criminal justice policy impact statement if the bill, as introduced or amended, does the following: (1) creates a criminal offense; (2) significantly alters the elements of an existing criminal offense; (3) alters the penalties applicable to a criminal offense; or (4) alters existing sentencing, parole, or probation procedures.

To the extent the information is available, the criminal justice policy impact statement must include the following:

- an estimate of the number of criminal cases that would be affected by the bill during the year in which the bill is to become effective and any estimates available for the following years;
- an estimate of the fiscal impact of detaining, imprisoning, or imposing other penalties on individuals in accordance with the provisions of the bill during the year in which the bill is to become effective and any estimates available for the following years;
- data concerning the impact of the bill on racial and ethnic groups;
- the potential impact of the bill on existing State or county detention facilities, correctional facilities, or other programs used for sentencing;
- whether the bill is likely to create a need for additional detention or correctional facilities or juvenile placement services; and
- the estimate of the fiscal impact associated with the need for additional judicial resources for legal representation and court services during the year in which the bill is to become effective and any estimates available for the following years.

DLS must prepare the criminal justice policy impact statement by requesting available information from (1) the Department of Juvenile Services (DJS); (2) the Department of Public Safety and Correctional Services (DPSCS); (3) the Judiciary; and (4) any other State, county, or local entity that DLS deems necessary. DLS or any other entity may not be required to prepare information that is not readily available for inclusion in the criminal justice policy impact statement. DLS may not be required to make a determination of racial or ethnic impact beyond reporting the data, if any, provided by the respondents listed above.

Current Law: DLS must prepare a fiscal and policy note for each bill considered by the General Assembly. In general, a standing committee of the General Assembly may not vote on a bill unless it is accompanied by a fiscal and policy note. A fiscal and policy note prepared by DLS must contain:

- an estimate of the fiscal impact of the bill on the revenues and expenditures of the State government and of local governments for five years, beginning with the year the bill takes effect. If the bill's full fiscal impact is not expected to occur during that time, the analysis must include each year until and including the first year during which the impact occurs;

- for bills that require a mandated appropriation in the State budget, a statement to that effect and an estimate of the fiscal impact of the mandated appropriation;
- for bills that impose a mandate on a unit of local government, a statement to that effect and an estimate of the fiscal impact of the local mandate, including the effect on local property tax rates;
- an analysis of the bill's economic impact on small businesses; and
- a list of sources of information used in preparing the fiscal impact estimates.

DLS must prepare a revised fiscal and policy note as soon as possible after the adoption of an amendment that changes the fiscal impact of a bill. A revised fiscal and policy note is typically prepared when a bill passes third reading in the house of origin and crosses over for consideration by the second house.

Background: The inclusion of information regarding a bill's impact on minorities, sometimes referred to as a "racial impact statement," is intended to provide a mechanism to address potential unintended consequences of legislation that may be hard to reverse once enacted. The most frequently cited example involved the federal crack cocaine mandatory sentencing policies adopted in the late 1980s. Mandatory prison terms of five years were established for possession or sale of five grams of crack cocaine. The same five-year term was also applicable to the sale of powder cocaine but at a threshold of 100 times (500 grams) the quantity of crack cocaine. Crack, which is generally sold in smaller doses, was at least initially being distributed more prevalently in low-income, minority neighborhoods. In the first 20 years since the law was enacted, more than 80% of prosecutions for crack-related offenses were of African Americans.

Zone drug laws, which penalize drug offenses more harshly when they take place near a school zone or other public facility (*e.g.*, public housing), have also been shown to have a severe disproportionate racial impact in some areas. Because urban areas are more densely populated and often have large minority populations, minorities are more likely to be within proximity of a designated zone space and, accordingly, subject to harsher punishment than others who commit the same offense in a less populated area. For example, a 2005 state analysis of New Jersey zoning laws demonstrated that 96% of individuals serving prison time for zone offenses were African American or Hispanic.

In 2008, Iowa became the first state to enact legislation requiring the preparation of racial impact statements for proposed legislation affecting sentencing, probation, or parole policies. The legislation was reportedly a reaction to a study finding that Iowa's prison population had the highest racial disparity among the states. To date, three other states

(Connecticut, Minnesota, and Oregon) prepare racial impact statements in specified circumstances.

State/Local Fiscal Effect: Although fiscal and policy notes do not currently include a specific criminal justice policy impact statement, to a large extent the bill's requirements are already being met. For example, the bill summary portion of each fiscal and policy note typically states if a bill creates a criminal offense; alters the elements of an existing criminal offense; alters penalties applicable to a criminal offense; or alters existing sentencing, parole, or probation procedures. In addition, if a State or local entity provides a credible estimate of the number of cases that would be impacted by the bill's provisions, that information is included as part of the fiscal analysis. DJS, DPSCS, and the Judiciary are already queried when preparing relevant estimates to determine any potential impact on their respective operations. Finally, standard language regarding incarceration costs is generally included in any fiscal and policy note involving criminal penalties. This language details incarceration costs relating to per diem State grants to local detention facilities, per diem operating costs of local detention facilities, and the average cost of housing a new State correctional facility inmate.

Although the fiscal impact is often not quantified for a majority of fiscal and policy notes involving incarceration costs and other criminal justice-related expenses, DLS believes that, in general, the relevant entities are providing any credible information that is readily available, particularly considering the volume of requests that are received and the limited time available during which a request for fiscal impact information must be prepared and processed.

Information regarding the potential impact of a bill on racial and ethnic groups is not currently included in fiscal and policy notes. To the extent that the relevant entities can find readily available and credible information and provide it to DLS, that information can be incorporated into fiscal and policy notes using existing resources. The bill does not require DLS to collect any data or conduct any new analyses regarding this topic that are not provided by the agencies queried.

Additional Comments: DLS notes that it does not typically request information from DJS, DPSCS, or the Judiciary for bills that create a criminal offense or alter criminal penalties in cases where the new offense or penalty is not the *primary* function or purpose of the bill. However, under the bill, DLS must request information from these agencies for *every* instance in which a criminal offense or penalty is created or modified. This substantially increases the volume of fiscal and policy note requests handled by the affected agencies, which could disrupt and delay their responses for other bills. It may also create significant disruptions in DLS's ability to deliver fiscal and policy notes in a timely fashion.

DLS also notes that the volume of racial impact statements prepared by other states is substantially lower than what is required in Maryland under the bill. For example, as of December 2015, Connecticut had prepared only 1 racial impact statement, Minnesota had prepared 11, and Oregon had prepared 4.

Additional Information

Prior Introductions: HB 678 of 2015 received a hearing in the House Rules and Executive Nominations Committee, but no further action was taken. Its cross file, SB 478, received a hearing in the Senate Rules Committee, but no further action was taken. HB 709 of 2012, a similar bill, received a hearing in the House Rules and Executive Nominations Committee, but no further action was taken on the bill. Its cross file, SB 679, received an unfavorable report from the Senate Rules Committee.

Cross File: SB 576 (Senator Ramirez) - Rules.

Information Source(s): Carroll, Harford, Montgomery, and St. Mary's counties; cities of Bowie and Takoma Park; Judiciary (Administrative Office of the Courts); Office of the Public Defender; Department of Juvenile Services; Department of Natural Resources; Department of Public Safety and Correctional Services; Department of State Police; Maryland Department of Transportation; Minnesota Sentencing Guidelines Commission; Connecticut General Assembly; Oregon Criminal Justice Commission; Iowa General Assembly; American Bar Association; *Washington Law Review*; *Ohio State Journal of Criminal Law*; Department of Legislative Services

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