

# THE PROMISE OF RACIAL IMPACT STATEMENTS:

FINDINGS FROM A CASE STUDY OF MINORITY  
IMPACT STATEMENTS IN IOWA



NATIONAL —  
**JUVENILE JUSTICE**  
— NETWORK

**Report**

**THE PROMISE OF RACIAL IMPACT  
STATEMENTS: FINDINGS FROM A CASE  
STUDY OF MINORITY IMPACT  
STATEMENTS IN IOWA**

2020

## **Acknowledgements**

The research study of Iowa's Minority Impact Statements was conducted by the Community Empowerment Law Project at The University of Iowa College of Law Legal Clinic by original report authors Tristan Gahn, Bryan Porter, and Anthony Dopp.

Note that this report is deeply informed by the writings of Tristan Gahn, Bryan Porter, and Anthony Dopp, with edits from Nanyamka Shakura and Jeree Thomas of NJJN's Racial Justice Working Group, NJJN Staff, and NJJN 2020 Summer Interns.

## **About Community Empowerment Law Project (CELP), The University of Iowa College of Law Legal Clinic:**

The CELP, through the representation of nonprofit organizations and other entities, works to strengthen communities, create economic opportunity, and advance social justice in the State of Iowa. We aim to help clients and communities amplify their voices, increase their impact, build strategic alliances, and to engage lawyers as collaborative partners and fellow problem-solvers. The CELP undertakes matters ranging from entity formation and strategic planning to coalition building and the design of advocacy plans.

## **About National Juvenile Justice Network (NJJN):**

The National Juvenile Justice Network leads a membership community of 60 state-based organizations and numerous individuals across 42 states and D.C. We all seek to shrink our youth justice systems and transform the remainder into systems that treat youth and families with dignity and humanity. Our work is premised on the fundamental understanding that our youth justice systems are inextricably bound with the systemic and structural racism that defines our society; as such we seek to change policy and practice through an anti-racist lens by building power with those who are most negatively affected by our justice systems, including young people, their families and all people of color. We also recognize that other vulnerable populations - including LGBTQIA+, those with disabilities and mental illness, girls and immigrants - are disparately and negatively impacted by our justice systems, and thus we also seek to center their concerns in our policy change work. For more information, visit [www.njjn.org](http://www.njjn.org).

Please note the terms minority impact statement and racial impact statement have been used interchangeably in this report. As noted in the background section, Iowa uses the term minority impact statements due to its efforts to address multiple populations impacted negatively by legislation.

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# Forward

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Dear Reader,

We find ourselves in the midst of an important reckoning in our country.

The violent legacy of racial oppression has caught up to us, and a resistance movement led in large part by young people demanding the dismantling of white supremacy in the United States has emerged. Those of us dedicated to transforming our country's treatment of young people who interact with the law welcome this as a moment to get serious about the racial inequities that lead to youth of color being disproportionately profiled, over policed, more harshly punished and left with a lasting legacy of racial trauma.

Undoing centuries of institutionalized harm requires us to refocus the lens with which we view policy decisions and how they impact communities of color. The following report examines racial or minority impact statements, which have emerged as a potential legislative tool for our collective reimagining of the policy process.

But do they work?

What follows is a first step of answering that question. Through a case study of Iowa's implementation of minority impact statements, we present the history, context and lessons learned about the efficacy of these legislative tools. In subsequent brain trusts and convenings, we hope to delve deeper into the reasons why advocates may or may not choose to push for the use of racial impact statements in their states, and what that could mean for the future of youth justice more specifically.

Ultimately, our vision is clear: the stronghold of white supremacy in our legal systems must be eradicated. Together, we must create the most effective means to that end.

In Solidarity,

K. Ricky Watson, Jr.  
Executive Director, National Juvenile Justice Network

# Executive Summary

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## Overview of Racial Impact Statement Legislation

The most pernicious and destructive force distorting America's criminal legal system is racism and, as a result, the persistent racial disparities at each contact point from arrest to incarceration. Our nation's policing and legal systems are rooted in white supremacy with the express goal of suppressing communities of color. In America, Black people are a little over thirteen percent of the U.S. population, but thirty-three percent of the prison population.<sup>1</sup> The youth justice system faces a similar, but more acute trend. Black youth are fourteen percent of the population, but forty-two percent of the youth detained in youth detention centers and youth prisons.<sup>2</sup> Nationally, advocates, legislators, and system stakeholders continue to grapple with what tools could effectively address this disparity given its deep historical, cultural, and legislative roots.

The National Juvenile Justice Network (NJJN) is committed to racial justice and the dismantling of systems that entangle youth. In addition to providing members with anti-racist tools and resources to put an end to youth incarceration, NJJN also provides information to expose and organize against the overrepresentation of youth of color in both the youth and adult systems. NJJN formed the Racial Justice Working Group in 2016, which was tasked with researching tangible policy solutions that reduce disparities in the youth justice system. In 2019, the Racial Justice Working Group began exploring racial impact statements as a potential advocacy tool in ending racial disparities.

The first racial impact statement legislation in the country passed in Iowa. The legislation was actually a *minority impact* statement that not only analyzed the impact of proposed legislation by race, but also its impact on women and people with disabilities. In the fall of 2019, the Racial Justice Working Group partnered with the Community Empowerment Law Project of the University of Iowa College of Law (CELP) to learn about the effort to pass the minority impact legislation, the methodology of creating minority impact statements, how the effort to implement the statements has been sustained over the years, and whether Iowa's minority impact statement requirement led to reductions in racial disparities over the last decade.

Since the passage of Iowa's statute in 2008, Connecticut<sup>3</sup>, Oregon<sup>4</sup>, and most recently New Jersey<sup>5</sup> have followed Iowa's example by passing a version of the minority impact statement that is more specifically focused on racial and ethnic disparities. Several states, including Oklahoma, New York, Illinois,

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<sup>1</sup> "U.S. Census Bureau Quick Facts: United States," U.S. Census Bureau, accessed July 1, 2020, <https://www.census.gov/quickfacts/fact/table/US/PST045219>; Jennifer Bronson and E. Ann Carson, "Prisoners in 2017," *Bureau of Justice Statistics*, April 2019, <https://www.bjs.gov/content/pub/pdf/p17.pdf>.

<sup>2</sup> C. Puzzanchera, A. Sladky, and W. Kang, "Easy Access to Juvenile Populations: 1990-2018," updated July 15, 2019; M. Sickmund, A. Sladky, and W. Kang, W, "Easy Access to Juvenile Court Statistics: 1985-2017," updated March 31, 2020.

<sup>3</sup> Conn. Gen. Stat. § 2-24b (2018).

<sup>4</sup> Or. Rev. Stat. § 137.683 (2019).

<sup>5</sup> N.J. Rev. Stat. § 2C:48B-2 (2017).

Maryland, Kentucky, Vermont, Mississippi, and Minnesota have introduced minority impact statement legislation over the years.<sup>6</sup>

For this research collaboration, CELP researchers reviewed every minority impact statement published by the Iowa Fiscal Services Division between 2009 and 2019, asking critical questions about how they were completed and how they informed legislative decision making and public opinion. As a result, the findings from this research are broadly applicable to states considering the passage or implementation of legislation to create mechanisms to assess the racial impact of new or amended criminal laws. Iowa's law serves as a critical case study of both the opportunities and challenges associated with the passage and implementation of targeted anti-racist policies like minority impact statements.

## Key Takeaways:

- 1. To fully inform legislators and the electorate on the effect of legislation, it is imperative that minority/racial impact statements are available to all stakeholders as early in the legislative process as possible, and preferably before lobbyists, advocates, and constituents must express support for or opposition to a bill.**
- 2. To actualize their promise, minority/racial impact statements should consistently provide a thorough and comprehensive analysis of the impact of justice system legislation using a standardized process and methodology. A generic and brief analysis is insufficient to guide legislative decision making.**
- 3. Minority/Racial impact statements are meant to inform legislators of the effects of bills on communities of color or other marginalized communities so that they can take steps to avoid increasing disparities. In order to enhance their effectiveness, legislation should prohibit the passage of bills with a negative impact statement - one that indicates a bill will increase racial, ethnic, gender, or disability disparities.**

If fully implemented as intended, minority/racial impact statements can be a critical tool for addressing racial disparities in America's criminal and juvenile systems. Research conducted on Iowa's implementation illuminates the importance of holding agencies and legislators accountable for effective and full implementation to secure the desired effect. It also highlights the value of data to forecast the impact of legislation on communities of color while simultaneously illuminating that data alone is not enough. Racial impact statements are not a panacea but a tool for legislators, advocates, and agencies to ensure their decisions help and do not harm communities of color. Finally, this research also elevates a list of components that we hope will inform future legislation to realize the full potential of racial impact statements.

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<sup>6</sup> The Sentencing Project, "State Advocacy News: Expanding Racial Impact Statements," March 1, 2019, <https://www.sentencingproject.org/news/7002/>.

# Iowa's Minority Impact Statement Legislation

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In 2007, Marc Mauer and Ryan King released *Uneven Justice: State Rates of Incarceration by Race and Ethnicity*, which identified Iowa as the state with the highest ratio of Black-to-white incarceration in the nation—13.6 to 1.<sup>7</sup> Despite the fact that according to Census data, Iowa's Black population hovered between two percent<sup>8</sup> and four percent<sup>9</sup> from 2000 to 2019.

The report's findings were deeply troubling to Representative Wayne Ford, only the tenth Black legislator in the state's history and the longest-serving Black legislator in the state.<sup>10</sup> Spurred to action by the devastating data, Representative Ford worked with Marc Mauer to draft legislation with the purpose of requiring legislators and the Governor to confront disparities in the criminal legal system. Representative Ford made the strategic decision to include an analysis of gender and disability disparities in addition to race in the bill in order to address these disparities as well as to garner a larger and more diverse base of supporters.

Bill HF 2393, known as the “Minority Impact Statement” bill, applied to any bill, joint resolution, or amendment that would create a new public offense, change an existing offense, or change a penalty related to sentencing, probation, or parole. The bill required that prior to a debate on an Iowa legislative chamber floor there would be a statement issued assessing the legislation's impact on people of color, women, and people with disabilities.<sup>11</sup>

The “Minority Impact Statement” bill passed the House unanimously and passed the Senate with only two opposing votes.<sup>12</sup> With the passage of the bill, Iowa became the first state in the country to require the consideration of race, gender, and disability when considering criminal justice legislation.

CELP researchers undertook a study of the effect of the minority impact statement statute on legislators, advocates, and the public, and the effectiveness of the minority impact statement statute in reducing disparities in Iowa, with a focus on racial disparities. With respect to minority impact statements' effect on legislators, researchers calculated a bill's passage rate as it related to the determination of the bill's impact on minorities in the statement (Chart 2 below). To better understand if the public and lobbying/advocacy organizations were influenced by minority impact statements, the researchers

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<sup>7</sup> In 2005, the state of Iowa had 4,200 Black people incarcerated per 100,000. In contrast, only 309 white people were incarcerated per 100,000. Marc Mauer & Ryan S. King, *Uneven Justice: State Rates of Incarceration by Race and Ethnicity*, The Sentencing Project (Washington, DC: July 1, 2007): 10, available at <https://www.sentencingproject.org/publications/uneven-justice-state-rates-of-incarceration-by-race-and-et>.

<sup>8</sup> Population of Iowa: Census 2010 and 2000 Interactive Map, Demographics, Statistics, Quick Facts, Census Viewer <http://censusviewer.com/state/IA>.

<sup>9</sup> Census Quick Facts, Iowa; United States <https://www.census.gov/quickfacts/fact/table/IA,US/PST120218#PST120218>.

<sup>10</sup> Iowa House Democrats, “Member Profile: Wayne Ford” (February 27, 2009), <https://iowahouse.org/member-profile-wayne-ford/>.

<sup>11</sup> HF 2393, 2008 Leg. Sess. (Iowa 2008), <https://www.legis.iowa.gov/legislation/BillBook?ga=82&ba=HF%202393>.

<sup>12</sup> Bill History for HF 2393, <https://www.legis.iowa.gov/legislation/billTracking/billHistory?billName=HF%202393&ga=82>.

compared the statements and positions of lobbying and advocacy organizations on bills to the determination of the bill's impact on minorities in the statement. Lastly, in an effort to better understand whether minority impact statements had an effect on disparities in incarceration, researchers compared predicted and actual sentencing data for specific statutes, including Iowa's Robbery III statute. Their research guides the recommended steps towards effective implementation of racial impact statements outlined in the next section.

## How Iowa's Minority Impact Statements Function

Iowa's Minority Impact Statement statute took effect on July 1, 2008.<sup>13</sup> The legislation charged the Fiscal Services Division of the Legislative Services Agency (LSA), a non-partisan government agency that develops fiscal impact statements, with developing minority impact statements.<sup>14</sup>

To develop minority impact statements, the LSA works in cooperation with the Division of Criminal and Juvenile Justice Planning, the main entity that collects juvenile and criminal justice related data,<sup>15</sup> and incorporates the findings as part of a bill's fiscal note.<sup>16</sup> The LSA publishes approximately 170 fiscal notes per year<sup>17</sup> and publishes an annual memo entitled "Minority Impact Statement," which restates general census data, at the beginning of each fiscal year.<sup>18</sup>

The minority impact statements, according to the statute, are required to be attached to any new piece of legislation that either implements or alters parole, sentencing, or criminal law prior to a bill's floor debate.<sup>19</sup> As a practical matter, given time and staff restraints, statements are drafted only after a bill moves out of committee and before floor debate.<sup>20</sup> However, Iowa legislators may request the statement at any point during the legislative process.<sup>21</sup> Generally, lobbyists and the general public do not have access to the statement until the bill has passed either the House or Senate Chamber -- after they have had to express support or opposition to a given bill.<sup>22</sup>

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<sup>13</sup> The Act took effect July 1, 2008, but did not apply to grants for which applications were due until January 1, 2009. HF 2393, <https://www.legis.iowa.gov/legislation/BillBook?ga=82&ba=HF%202393>.

<sup>14</sup> The Iowa Legislature, "Fiscal Services," <https://www.legis.iowa.gov/agencies/nonpartisan/lsa/fiscalServices>.

<sup>15</sup> Iowa Code Ann. § 2.56 (2019).

<sup>16</sup> Legislative Services Agency Staff. Interviewed by Authors.

<sup>17</sup> Legislative Services Agency Staff. Interviewed by Authors.

<sup>18</sup> Holly Lyons, Minority Impact Statement Memo, July 15, 2020, Legislative Services Agency, <https://www.legis.iowa.gov/docs/publications/CIMI/1074340.pdf>

<sup>19</sup> Iowa Code Ann. § 2.56 (2019).

<sup>20</sup> Legislative Services Agency Staff. Interviewed by Authors.

<sup>21</sup> Mary Lynn Wolfe. Interviewed by Authors. Clinton, Iowa. November 24, 2019.

<sup>22</sup> Daniel Zeno. Interviewed by Authors. Des Moines, Iowa. October 16, 2019.



## CELP'S Study of Minority Impact Statements

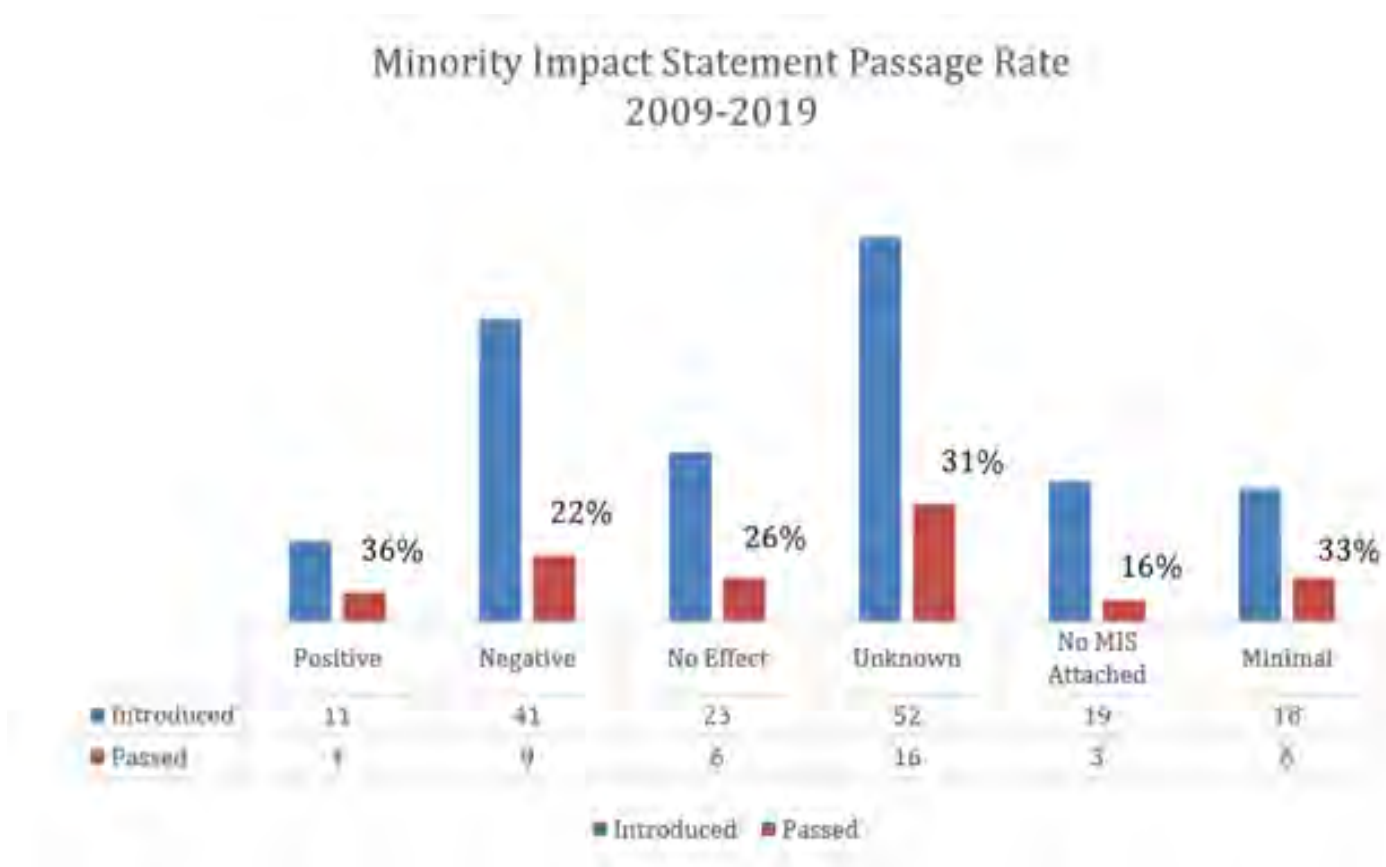
To understand the effect of minority impact statements, CELP researchers reviewed every minority impact statement published by the Fiscal Services Division between 2009 and 2019, identifying 176 criminal justice related bills that reached one of the chamber floors. Once identified, CELP reviewed the written justification for each impact and categorized the bills as positive, negative, no effect, unknown effect, minimal effect, or no minority impact statement attached. (See Chart 1 below for full breakdown.) Also see the appendix for real examples of each minority impact statement reviewed.

Chart 1. Bills Disaggregated by Impact Category

Category	Description of Category	Number of Relevant Bills Introduced from 2009-2019
<b>Negative</b>	The LSA deemed the bill would have a disproportionate impact on minorities and could increase the number of minorities in jails and prisons or result in longer sentences for minorities.	41
<b>Unknown Effect</b>	The LSA stated that the minority impact of a bill “could not be determined.”	52
<b>No Minority Impact Statement Attached</b>	The LSA did not attach any statement to a criminal justice bill, even though the subject qualified for a minority impact statement.	19
<b>Minimal</b>	The LSA determined that the bill in question would have a “minimal” impact.	18
<b>No Effect</b>	The LSA determined that the bill in question would have no minority impact.	23
<b>Positive</b>	The LSA concluded that the bill would reduce the number of minorities in prison and/or result in shorter sentences for minorities.	11

In addition to categorizing legislation by its effect, researchers analyzed minority impact statements to assess their influence on legislators and the public. First, to determine minority impact statements' effect on legislators, researchers calculated a bill's passage rate as it related to the minority impact statement's impact category. (Chart 2 below). Secondly, to understand minority impact statements' influence on the public, researchers reviewed declarations made by lobbying and advocacy organizations. Lastly, CELP researchers analyzed sentencing data and changes to Iowa's robbery III statute to understand minority impact statements' effect on incarceration disparities. Their research guides the recommended steps towards effective implementation of racial impact statements outlined in the next section.

Chart 2. Minority Impact Statement Passage Rate, 2009-2019



## Key Takeaways from Iowa on Minority Impact Statements

- 1. To fully inform legislators and the electorate on the effect of legislation, minority/racial impact statements should be available to all stakeholders as early in the legislative process as possible, and preferably before lobbyists, advocates, and constituents must express support for or opposition to a bill.**

In Iowa, after a bill is drafted and introduced, the bill is referred to a standing committee where the bill will be assigned to a subcommittee responsible for reviewing the legislation and reporting its recommendations. During subcommittee meetings, public hearings are held where lobbyists, organizations, and members of the public can advocate for or against a bill. However, under Iowa's current legislative process, a minority impact statement is only assigned prior to a floor vote, well after bills are referred to committees.<sup>23</sup> As a result, the public's opinion on legislation during these critical public hearings are not informed by minority impact statements.

Since minority impact statements are made public later in the legislative process there is limited information on how they affect the public's response to these statements. However, the information available indicates that some organizations will not change their opinion or response to a bill based on the bill having a negative minority impact. For example, the Iowa Peace Officers Association, a coalition of retired and employed peace officers across the state, meets annually with other public safety associations to discuss legislation.<sup>24</sup> In the Iowa Peace Officers Association's resolutions of 2017, 2018, and 2019, the organization stated that it "opposes the legalization of marijuana and its derivatives for any purpose."<sup>25</sup> In 2017, the Iowa legislature passed a bill reforming the penalty for marijuana possession and this bill had a positive minority impact statement, indicating the legislation would benefit communities of color.<sup>26</sup> Nonetheless, the Iowa Peace Officers Association declared against the bill and passed resolutions against it every year after, despite its positive effects on improving disproportionate incarceration rates.<sup>27</sup>

If minority impact statements were available earlier in the legislative process, the public could utilize the statement to hold legislators accountable, organize communities to promote or prevent the passage of legislation, and advocate for or against the legislation based on its impact. As the law is currently implemented, those advocacy strategies are unavailable to advocates, activists, and concerned citizens. By making minority impact statements available sooner in the legislative process, the public would have a meaningful opportunity to discuss and question their legislators about their position on the bill.

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<sup>23</sup> Legislative Services Agency Staff. Interviewed by Authors.

<sup>24</sup> See Iowa Peace Officers Association, "President's Message" (2019), <http://www.iowapeaceofficers.org/home.html>.

<sup>25</sup> Iowa Peace Officers Association, "IPOA 2019 Resolutions," <http://www.iowapeaceofficers.org/2019legislative.html>.

<sup>26</sup> S.F. 432 Minority Impact Statement, <https://www.legis.iowa.gov/docs/publications/FN/855463.pdf>.

<sup>27</sup> See S.F. 432, 87 Gen. Assemb. (2017), "Marijuana Possession Penalty," Lobbyist Declarations, <https://www.legis.iowa.gov/lobbyist/reports/declarations?ga=87&ba=SF432>.

- 2. To actualize their promise, minority/racial impact statements should consistently provide a thorough and comprehensive analysis of the impact of justice system legislation using a standardized process and methodology. A generic and brief analysis is insufficient to guide legislative decision making.**

As written, Iowa’s Minority Impact Statement statute mandates that the LSA analyze the impact a bill will have on all minorities. The LSA does not have a standardized method for analyzing or categorizing the impact of legislation. The bill categorizations that LSA used included negative effect, no effect, positive effect, minimal effect, and unknown effect, but nowhere are these terms defined.<sup>28</sup> Additionally, from 2009 to 2019, the length of the analysis of Iowa’s minority impact statements sharply decreased from two to three paragraphs to two to three sentences.<sup>29</sup> In order for these statements to be effective, they must be thorough and comprehensive, rather than simply conclusory statements.

CELP’s analysis also found that the LSA almost exclusively analyzed a bill’s impact on Black Iowans and does not include a bill’s impact on women, people with disabilities, or other people of color.<sup>30</sup> Furthermore, in recent years, there has been a dramatic spike in the number of bills classified as having an “unknown impact” by the LSA (see Chart 3). Over the past ten years, there have been fifty-two bills with “unknown” impact on minority communities (see Chart 1). Thirty-one of the fifty-two unknown impact statements – more than sixty percent – have been published within the past two years (see Chart 1).

Every year, the LSA develops a census memo titled “Minority Impact Statement” that they provide to both chambers at the beginning of each legislative session.<sup>31</sup> The LSA believes that in referencing the census memo in their analysis, and not actually showing their analysis in the fiscal note, they can make the statements shorter.<sup>32</sup> In many of the minority impact statements with an “unknown” impact, the LSA directs legislators to review their annual census memo,<sup>33</sup> which restates statistics about Iowa’s demographics in both its general population and prison population.<sup>34</sup> The memo is generic – it does not contain any bill-specific information and legislators are under no obligation to review the memo, which is provided to legislators once each year. The memo is not attached to a bill’s minority impact statement but can be accessed by legislators online or upon request.

As a result of the increase in bills with “unknown” impacts and bills without any minority impact statement, legislators are making decisions about legislation even though they lack critical information on

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<sup>28</sup> The CELP researchers also identified criminal justice legislation that merited a minority impact statement but did not have one attached.

<sup>29</sup> It is notable that the minority impact statements were the most detailed in 2009 when former Representative Wayne Ford was still serving in the legislature.

<sup>30</sup> Legislative Services Agency Staff. Interviewed by Authors.

<sup>31</sup> Holly Lyons, Minority Impact Statement Memo, January 15, 2020, Legislative Services Agency, <https://www.legis.iowa.gov/docs/publications/CIMI/1074340.pdf>.

<sup>32</sup> Legislative Services Agency Staff. Interviewed by Authors.

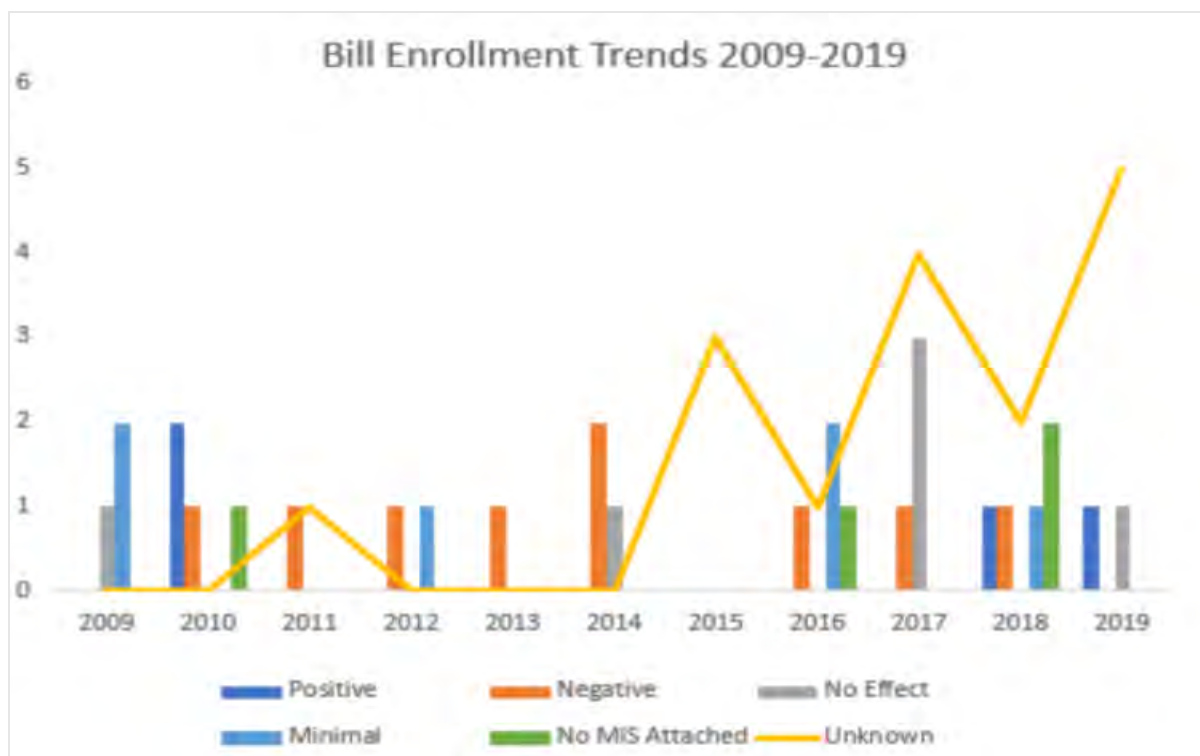
<sup>33</sup> E.g., Iowa Legislature, SF 275 Fiscal Note (April 22, 2019), <https://www.legis.iowa.gov/docs/publications/FN/1045027.pdf>.

<sup>34</sup> Holly Lyons, Minority Impact Statement Memo, January 15, 2020, Legislative Services Agency, <https://www.legis.iowa.gov/docs/publications/CIMI/1074340.pdf>.



a criminal bill's potential impact on minority communities, completely undermining the intent of the law. Consequently, we believe a standardized process of categorizing impacts should be established, as well as a standard methodology for calculating impact.

Chart 3. Bill Enrollment Trends 2009-2019



3. **Minority/Racial impact statements are meant to inform legislators of the effects of bills on communities of color or other marginalized communities so that they can take steps to avoid increasing disparities. In order to enhance their effectiveness, legislation should prohibit the passage of bills with a negative impact statement - one that indicates a bill will increase racial, ethnic, gender, or disability disparities.**

In isolation, minority/racial impact statements do not determine the enrollment of positive, equitably implemented legislation. To be effective, minority/racial impact statements should be utilized to prohibit bills with negative impacts that increase disparities. Simultaneously, these statements should be used to guide the passage of bills with positive impacts, ensuring that these bills are implemented equitably and with fidelity.

Minority impact statements are not a decisive factor for many Iowa legislators in part because there is insufficient information or analysis for them to be used effectively. According to CELP’s research, bills have similar passage rates of between twenty-two and thirty-six percent regardless of the minority impact statement’s impact category (see Chart 2), although the expectation is that bills with a negative minority impact statement will have a very low passage rate and bills with a positive minority impact statement will have a much higher passage rate.

Nonetheless, data on disparities in Iowa has shown a slight decrease from a Black-to-white ratio of incarceration of 13.6 to 1 in 2007<sup>35</sup> to 11 to 1 in 2016.<sup>36</sup> While the drop in disparities can’t be directly attributed to the passage of minority impact statement legislation, it underscores minority impact statements as a tool to help educate decision makers about disparities.

It is also notable that even when a law has the potential to create a positive impact or to reduce harm for minority communities, the actual implementation of the law is just as important. For example, CELP conducted an analysis of a 2010 bill that created Robbery III as a class D felony, which is a non-forcible felony that is not subject to a mandatory minimum prison sentence.<sup>37</sup> Sentencing could be less stringent than a Class A, B or C felony, and, according to the minority impact statement, the bill could result in “a significant decrease in the confinement of minorities.”<sup>38</sup>

Unfortunately, the analysis of implementation of the robbery law suggests otherwise. Even after the creation of Robbery III as a class D felony, the conviction rate of Black Iowans for robbery continued to increase, yet the conviction rate of white Iowans decreased over the same time period (see Chart 4). Black Iowans continued to be convicted under the more punitive Class B and C felonies with no convictions under the Class D felony (see Chart 5).

For white Iowans, the addition of the Class D felony meant that more individuals were convicted for the aggravated misdemeanor charge instead of the more severe felonies (see Chart 6). For Black Iowans, the aggravated misdemeanor charge rarely resulted in a conviction, but the more severe felonies remained the most likely charges to result in convictions for Black Iowans on robbery.

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<sup>35</sup> Marc Mauer & Ryan S. King, *Uneven Justice: State Rates of Incarceration by Race and Ethnicity*, The Sentencing Project (Washington, DC: July 1, 2007): 10, available at <https://www.sentencingproject.org/publications/uneven-justice-state-rates-of-incarceration-by-race-and-et>.

<sup>36</sup> Ashley Nellis, *The Color of Justice: Disparity in State Prisons*, The Sentencing Project (Washington, DC: June 14, 2016): 8, available at <https://www.sentencingproject.org/publications/color-of-justice-racial-and-ethnic-disparity-in-state-prisons/>.

<sup>37</sup> Current law provides for a class C felony offense of second-degree robbery, a forcible felony subject to 10 years in prison, with a requirement that 70.0% (7.0 years) be served in prison. Creating a non-forcible Class D felony of third-degree robbery provided that a person may receive a sentence or probation or prison. The average length of stay for a class C second degree robbery is 7.0 years in prison. The average length of stay for a Class D felony crime against a person is 20.9 months (1.75 years). SF 2250, 87 Gen. Assemb. (Ia. 2010) Robbery III. Available at <https://www.legis.iowa.gov/docs/publications/FN/964856.pdf>.

<sup>38</sup> S.F. 2250, 87 Gen. Assemb. (Ia. 2010) Robbery III. Available at <https://www.legis.iowa.gov/docs/publications/FN/964856.pdf>.

Chart 4. % of Robbery Convictions by Race Per Year

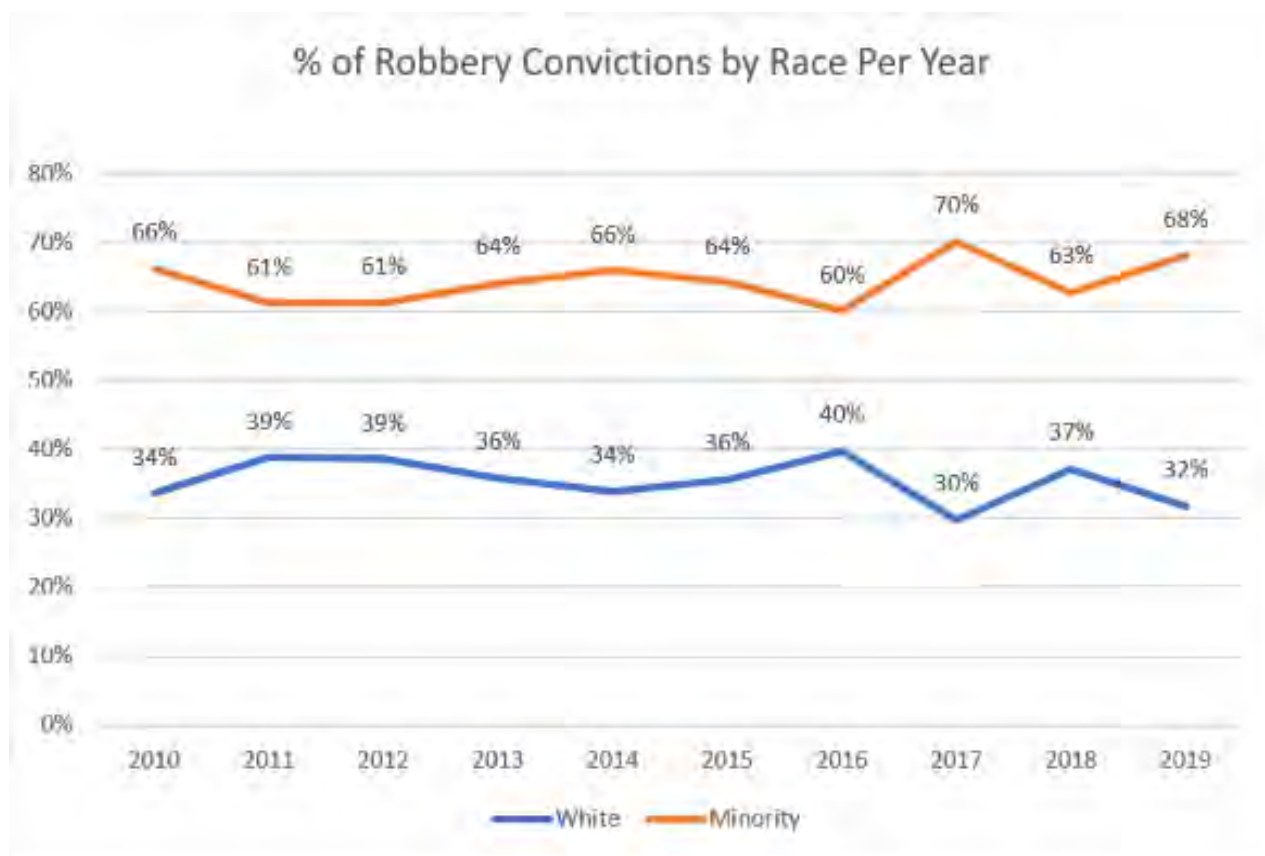


Chart 5. Black Robbery Convictions by Crime Subtype 2010-2019

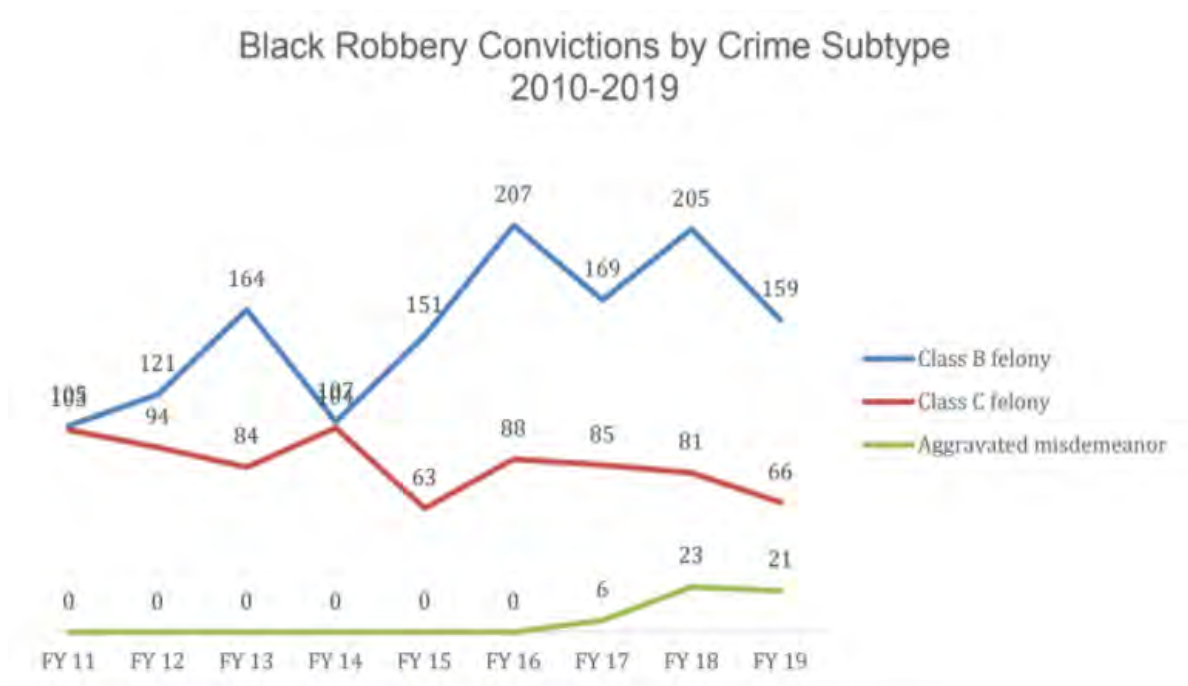
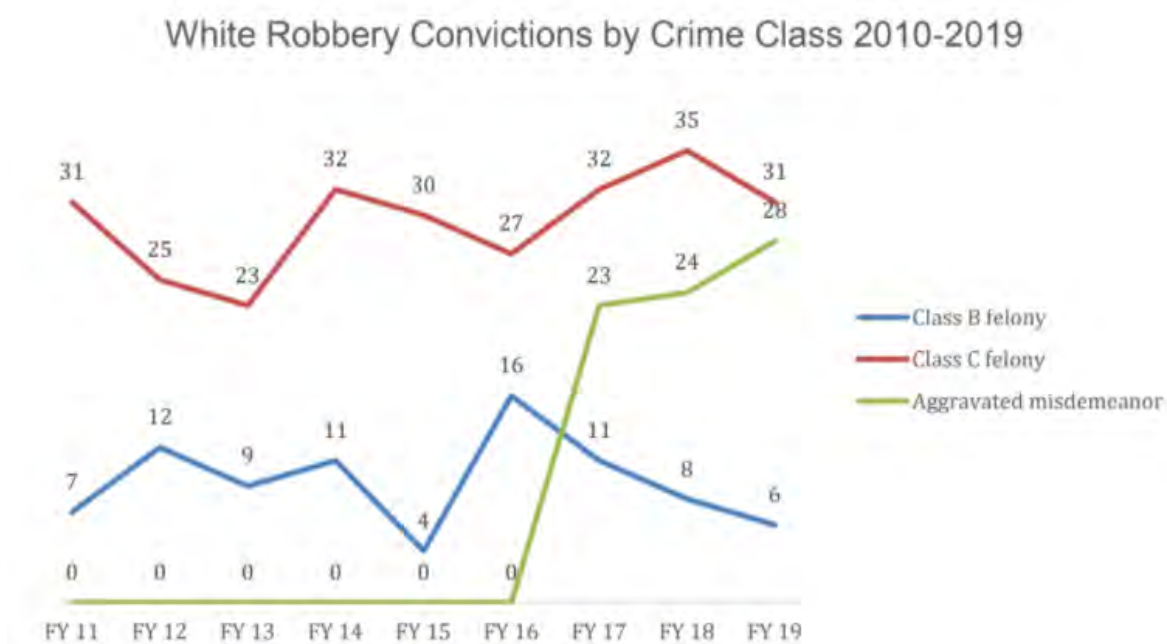


Chart 6. White Robbery Convictions by Crime Class 2010-2019





Because of the disconnect between the potential positive impact on minority communities predicted in the minority impact statement, and the reality of the bill in practice, there is a need for greater oversight of the implementation of criminal bills and some accountability mechanism by which the public, LSA, and legislators can better understand how minority impact statement predictions compare with reality. As Iowa remains the state with the third highest disparity in incarceration rates in the nation,<sup>39</sup> it is clear that the minority impact statement statute must be strengthened to maximize its impact.

## Model Legislation Recommendations

The case study of Iowa's minority impact statement legislation is an illuminating lesson for advocates. While no state has adopted a model minority/racial impact statement, implementation of each statute has highlighted important lessons for how to strengthen the efficacy of minority/racial impact statements. Advocates should consider the following lessons learned from Iowa, Connecticut, Oregon and New Jersey:

1. Require that the minority/racial impact statement cover both youth and adult justice related legislation. If possible, require that the legislation also cover regulations, as done in New Jersey<sup>40</sup> and the state grantmaking process, as done in Iowa.<sup>41</sup>
2. Ensure that all legislators have the power to request a statement on a youth or adult justice related bill if it does not have a statement.
3. Statements should be available to the public before public committee hearings begin.
4. The agency developing the statements should use standardized, defined categories (i.e. negative, positive, no impact) to ensure the statements are meaningful and consistent.
5. Consider including race, ethnicity, disability, gender, and sexual orientation as potential identities to consider for the purposes of monitoring the impact of the youth and adult systems on particular populations.
6. Require that the statement includes an explanation of the methodology used to determine the impact. Oregon's law requires a "statement of the methodologies and assumptions used in preparing the estimate."<sup>42</sup>
7. Require that the agency developing the statement provide a detailed and comprehensive analysis of the specific bill beyond the general census data on the state's general population versus its criminal justice population.
8. Require an annual report analysis of minority impact statements that includes how many were produced, how many were categorized as negative, positive, no impact, etc., and how many of each category were attached to bills that passed the legislature and were signed by the governor.
9. Provide language to include the opportunity to look retrospectively at the racial or minority impact of current law compared to proposed legislation.

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<sup>39</sup>Nellis, 8.

<sup>40</sup> NJ Rev. Stat. § 2C:48B-2 (2017).

<sup>41</sup> Iowa Code Ann. § 2.56 (2019).

<sup>42</sup> Or. Rev. Stat. § 137.683 (3)(c) (2020).

10. Prohibit legislation with a negative impact from being passed or require such legislation to include a mechanism for reducing the racially disparate impact of the law.
11. Include an accountability and oversight mechanism in the statute.

## Conclusion

In order to fulfill their promise as an anti-racist tool and accomplish the intent of the drafters, the culture surrounding minority/racial impact statements must change. The agency drafting the statements must see it as a key function, and staff should have the necessary time and training to conduct a detailed analysis. Legislators and their staff must ask for minority/racial impact statements, discuss them with colleagues, and use them in debates.

Similarly, lobbyists, advocates, and constituents should consider minority/racial impact statements before expressing their opinion on a bill. These statements, like other anti-racist policies, are limited by the historical, social, and systemic challenges associated with white supremacy in policymaking and policy implementation. While minority/racial impact statements can be a meaningful tool to decrease the disparate impact of incarceration on minority communities, they are one tool, not a silver bullet. Reform at all stages of the criminal legal process, from policing practices to reentry opportunities, is necessary to actualize their intended impact.

Racial impact statements can have a greater impact on decreasing racial disparities when they are implemented robustly: all criminal and juvenile bills must contain a detailed analysis. The analysis must be publicly available early in the legislative process and a negative racial impact statement should prevent passage of legislation, at least and until the legislation has been modified to decrease its negative impact. Advocates in states where racial impact statements are being introduced as a tool to decrease disparities should take note of the lessons from this study and advocate for the model recommendations from this report.

## Appendix A: Examples of Iowa MIS Categories

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### Positive Effect

#### **Minority Impact**

[Senate File 378](#) is expected to have a positive minority impact on the African American community. In FY 2018, 20.7% of the persons convicted of first offense marijuana possession were African American. The U.S. Census Bureau estimates that as of July 1, 2017, the population of Iowa is 4.5% African American. Please refer to the LSA memo addressed to the General Assembly, [Minority Impact Memo](#), dated January 7, 2019, for information related to minorities in the criminal justice system.

### Negative Effect

#### **Minority Impact**

To the extent the Bill results in additional criminal convictions, there will be a disproportionate impact on minorities because approximately 16.0% to 18.0% of offenders convicted under the Bill's provisions may be minorities. Additional criminal convictions will result in an increased number of minority offenders supervised in the corrections system.

### Unknown Effect

#### Minority Impact

The minority impact of [SF 275](#) as amended is unknown. Refer to the LSA memo addressed to the General Assembly, [Minority Impact Statement](#), dated January 7, 2019, for information related to minorities in the criminal justice system.

#### Fiscal Impact

The fiscal impact of [SF 275](#) as amended cannot be estimated. The Bill establishes a new criminal offense, and the resulting cost to the Justice System cannot be estimated. The average State cost for one aggravated misdemeanor conviction ranges from \$4,700 to \$7,500. This estimate includes operating costs incurred by the Judicial Branch, the State Public Defender, and the Department of Corrections for one conviction. The cost would be incurred across multiple years for prison and parole supervision.

#### Sources

Criminal and Juvenile Justice Planning Division, Department of Human Rights

/s/ Holly M. Lyons

April 22, 2019

### No Effect

**Minority Impact:** There is no minority impact expected as a result of this bill.

#### Sources

Department Human Rights, Criminal & Juvenile Justice Planning Division  
Department of Agriculture and Land Stewardship

Holly M. Lyons

February 25, 2016



### Minimal Effect

**Minority Data Information:** The impact on minorities is estimated to be minimal. Refer to the Legislative Services Agency (LSA) [Minority Impact Statements Memo](#) dated January 26, 2016, for information related to minorities in the criminal justice system.

**Correctional Data Information:** The average state cost for one Class C felony conviction ranges from \$7,800 to \$18,400. At this time it is estimated that only three prison admissions annually will fall into the Class C felony category and remain in prison longer than current law. The LSA [Correctional Impact Statements Memo](#) dated February 18, 2016, contains additional information.

#### Fiscal Impact

The fiscal impact on the corrections system and the indigent defense budget is estimated to be minimal.

#### Sources

Iowa Department of Human Rights, Criminal and Juvenile Justice Planning Division  
Iowa Department of Corrections  
Iowa State Public Defender

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/s/ Holly M. Lyons

February 24, 2016

## Appendix B: Statutory Examples

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### **Iowa Code Section 8.11 Grant applications — minority impact statements.**

1. Each application for a grant from a state agency shall include a minority impact statement that contains the following information:
  - a) Any disproportionate or unique impact of proposed policies or programs on minority persons in this state.
  - b) A rationale for the existence of programs or policies having an impact on minority persons in this state.
  - c) Evidence of consultation of representatives of minority persons in cases where a policy or program has an identifiable impact on minority persons in this state.
2. For the purposes of this section, the following definitions shall apply:
  - a) “Disability” means the same as defined in section 15.102.
  - b) “Minority persons” includes individuals who are women, persons with a disability, African Americans, Latinos, Asians or Pacific Islanders, American Indians, and Alaskan Native Americans.
  - c) “State agency” means a department, board, bureau, commission, or other agency or authority of the state of Iowa.
3. The office of grants enterprise management shall create and distribute a minority impact statement form for state agencies and ensure its inclusion with applications for grants.
4. The directives of this section shall be carried out to the extent consistent with federal law.
5. The minority impact statement shall be used for informational purposes.

### **Conn Gen. Stat. Sec. 2-24b. Racial and ethnic impact statement required for certain bills and amendments.**

- (a) Beginning with the session of the General Assembly commencing on January 9, 2019, a racial and ethnic impact statement shall be prepared with respect to certain bills and amendments at the request of any member of the General Assembly. With respect to a bill favorably reported during the regular session, any such request shall be made not later than ten days after the deadline for the committee that introduced the bill to vote to report favorably under the joint rules of the House of Representatives and the Senate. With respect to an amendment introduced during the regular session, any such request shall be made at least ten days prior to the deadline for adjournment sine die of the regular session.
- (b) The joint standing committee of the General Assembly having cognizance of matters relating to government administration may make recommendations for a provision to be included in the joint rules of the House of Representatives and the Senate concerning the procedure for the preparation of such racial

and ethnic impact statements, the content of such statements and the types of bills and amendments with respect to which such statements should be prepared.

### **Oregon Revised Statute 137.683**

#### **Racial and ethnic impact statements for proposed legislation**

(1) As used in this section, “criminal offender population” means all persons who are convicted of a crime or adjudicated for an act that, if committed by an adult, would constitute a crime.

(2)(a) Upon written request from a member of the Legislative Assembly from each major political party, the Oregon Criminal Justice Commission shall prepare a racial and ethnic impact statement on proposed legislation that is related to crime and likely to have an effect on the criminal justice system.

(b)The statement shall describe the effects of the proposed legislation on the racial and ethnic composition of the criminal offender population.

(3)A racial and ethnic impact statement must be impartial, simple and understandable and must include, for racial and ethnic groups for which data are available, the following:

(a)An estimate of how the proposed legislation would change the racial and ethnic composition of those likely to be convicted of a criminal offense created or modified by the proposed legislation;

(b)An estimate of the average length of incarceration that each racial and ethnic composition group receives as a sentence, if applicable;

(c)A statement of the methodologies and assumptions used in preparing the estimate; and

(d)An estimate of the racial and ethnic composition of the crime victims who may be affected by the proposed legislation.

(4) The commission shall adopt rules to carry out the provisions of this section. [2017 c.614 §2]

Note: 137.683 (Racial and ethnic impact statements for proposed legislation) and 137.685 (Racial and ethnic impact statements for state measures) were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 137 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

### **NJ Rev Stat § 2C:48B-2 (2017)**

#### **2C:48B-2 Racial and ethnic impact statement for certain proposed rules.**

3. In proposing a rule for adoption, the agency involved shall issue a racial and ethnic community criminal justice and public safety impact statement setting forth whether the proposed rule will have an impact on pretrial detention, sentencing, probation, or parole policies concerning adults and juveniles in this State and, if so, how the rule would affect racial and ethnic minorities, including whether it is likely

to have a disproportionate or unique impact on the racial and ethnic communities in the State and the rationale for the proposed rule having an identifiable impact on racial and ethnic persons in this State, and any anticipated impact upon correctional facilities and services for racial and ethnic minorities, the adjudication of criminal and juvenile justice matters involving racial and ethnic minorities, and public safety in racial and ethnic communities and the victims and potential victims in those communities. This statement shall be included in the notice of a proposed rule as required by subsection (a) of section 4 of P.L.1968, c.410 (C.52:14B-4).