

Department of Legislative Services
Maryland General Assembly
2019 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 1016 (Delegate J. Lewis)
Rules and Executive Nominations

General Assembly - Analysis of Proposed Legislation - Racial Impact

This bill requires the Department of Legislative Services (DLS) to prepare, with the University of Maryland Lab for Applied Social Science Research (LASSR), a racial impact analysis for each bill that (1) creates a new misdemeanor or felony offense; (2) substantively alters an element of a misdemeanor or felony offense; (3) alters the penalty for a misdemeanor or felony offense; or (4) alters sentencing, parole, or probation procedures. The bill specifies requirements for the racial impact analysis. If a racial impact analysis is required, a committee may not vote on the bill unless the bill is accompanied by a racial impact analysis.

Fiscal Summary

State Effect: To the extent that LASSR is able to provide the required racial impact analyses to DLS in a timely fashion, the bill’s requirements can likely be absorbed within existing resources, as discussed below. If DLS must compensate LASSR for its work, which is not clear under the bill, general fund expenditures for DLS increase significantly and reimbursable fund revenues for LASSR increase commensurately.

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

Small Business Effect: None.

Analysis

Bill Summary: A racial impact analysis must include (1) the estimated number of criminal cases each year that would be impacted by the bill; (2) the anticipated impact of the bill on each “racial minority” group; (3) the anticipated impact of the bill on correctional facilities

and services; and (4) any other information relevant to analyzing the racial impact of the bill. DLS must send a copy of a racial impact analysis to the committee to which the bill is referred and to the primary sponsor of the bill.

Under the bill, “racial minority” means Black or African American, Hispanic or Latino, American Indian or Alaska Native, Asian, or Native Hawaiian or Pacific Islander.

Current Law: DLS is responsible for providing nonpartisan support to the members of the Maryland General Assembly, which includes legal, fiscal, committee, research, reference, auditing, administrative, and technological support. The Office of Policy Analysis within DLS is charged with, among other duties, preparing analyses of the fiscal, legal, and policy impact of proposed legislation and researching and preparing assessments and evaluations of issues of concern to the General Assembly.

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:

University of Maryland Lab for Applied Social Science Research

According to the University of Maryland, LASSR conducts social science research on various policy issues (including issues related to policing, community relations, health disparities, and education inequality) for use by policymakers and other stakeholders. The work of LASSR is carried out by 20 to 30 Ph.D. graduate research assistants, affiliate professors, and a full-time coordinator.

Racial Impact Statements

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. According to the National Conference of State Legislatures, four other states (Connecticut, Minnesota, Oregon, and New Jersey) prepare racial impact statements in specified circumstances. As of December 2015, Connecticut had prepared 1 racial impact statement, Minnesota had prepared 11, and Oregon had prepared 4.

State Fiscal Effect: DLS advises that, although the bill does not require DLS to incorporate racial impact analyses into fiscal and policy notes, the most cost-effective way to implement the bill's requirements is through the fiscal and policy note process. Although fiscal and policy notes do not include racial impact analyses, they do fulfill some of the bill's requirements. 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. 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. The Department of Juvenile Services, the Department of Public Safety and Correctional Services, and the Judiciary are 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.

Based on current trends in the number of bills introduced by subject matter, DLS estimates that, under the bill, roughly 900 bills require a racial impact analysis during each legislative session. As noted above, other states that provide similar analyses typically do fewer than 10 analyses per year. Thus, DLS does not have the capacity to perform the analyses with existing staff resources.

LASSR advises that it can likely meet the demand for racial impact analyses under the bill with existing resources. To the extent that LASSR is able to provide the analyses in a timely fashion, and relevant entities can provide readily available and credible information to DLS and/or LASSR, the racial impact analyses can be incorporated into fiscal and policy notes with existing resources. The bill's requirements, however, likely result in operational impacts for DLS and for other affected State agencies and local governments to the extent they receive additional information requests from DLS and/or LASSR under the bill. Also, it is unclear whether, under the bill, DLS must compensate LASSR for its work products. If payment is required, general fund expenditures for DLS likely increase significantly, and reimbursable fund revenues for LASSR increase commensurately.

DLS further notes that in many cases, the precise impacts of a bill on specified racial minority groups in Maryland may be difficult to estimate given the availability of relevant data and other challenges to predicting the impacts of bills on specified racial minority groups. For example, Maryland courts do not always have available, nor do they report data for convictions by race. As a result, in many cases, the racial impact analyses required under the bill may not result in additional meaningful information.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Maryland State Commission on Criminal Sentencing Policy; Judiciary (Administrative Office of the Courts); University System of Maryland; Department of Public Safety and Correctional Services; National Conference of State Legislatures; 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

Fiscal Note History: First Reader - February 22, 2019
mag/mcr

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