



NATION

Black Lives Matter, pandemic inequalities drive use of racial impact statements in state policy

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More states are trying to assess the racial impact of new laws, as the consciousness of many legislators has been raised by the murder of George Floyd, the Black Lives Matter movement and the pandemic's disproportionate effect on minorities.

In many states, lawmakers long have used so-called fiscal impact statements to predict how much money proposed laws will cost or save. Now more legislators want to use racial impact statements to predict how a particular measure might harm—or help—racial and ethnic groups or widen racial disparities.

Maine, Maryland and Virginia approved the use of such statements this year. About a dozen other states have similar legislation pending.

The idea of assessing proposed laws' racial effects is not new—Iowa began using racial impact statements for criminal justice bills in 2008, and nine other states have applied them to a small slice of criminal justice-related measures in the years since, according to the Sentencing Project, a nonprofit that advocates against mass incarceration.

The difference now is the urgency created by recent events, and the idea that racial impact statements could be attached to bills dealing with health, education or other topics, and not just criminal justice.

Critics say racial impact statements are unnecessary because legislative committees, and sometimes government agencies, already scrutinize bills to assess their likely effects. Some conservative opponents go further, arguing that race-based decision making is unconstitutional.

Racial impact statements are discriminatory, said Hans von Spakovsky, a former attorney in the U.S. Justice Department's Civil Rights Division and now a senior legal fellow at the conservative Heritage Foundation think tank.

"When state legislatures pass legislation, they should be concerned about the impact on all of their citizens, regardless of race," he said in an interview. "To single out one group of citizens and ignore everyone else is discriminatory and a very bad idea. It's unfair to citizens for legislators to be concerned with the impact on only one group defined by race."

But supporters, undeterred by such arguments, are pushing to expand the use of racial impact statements beyond criminal justice issues.

Maine's law, signed by Democratic Gov. Janet Mills in March, calls for a study to determine which policy areas might benefit from the use of such statements, "including, but not limited to, education; health care; employment, including wages; housing, including home ownership; and criminal justice and public safety."

The sponsor of the Maine bill, Assistant House Majority Leader Rachel Talbot Ross, a Democrat representing Portland, is one of only three Black legislators in Maine.

"I purposely wrote this bill to incorporate as many components of the social detriments to health as possible," she said in a phone interview. "You have to understand these historical components to capture a lived experience that is generally described as disparate—education, wealth and wages, and access to health care."

Talbot Ross, a ninth generation Mainer, said she came to the legislature five years ago with this sort of legislation in mind. Recent events gave the bill momentum, she said. The legislature approved it by a wide margin.

But state Rep. Bradlee Farrin, one of a handful of Republicans who voted against the bill, said in an interview that lawmakers can assess the racial effects of a bill without a formal impact statement.

"I believe the vetting process, public hearings, as well as the resources we as legislators have through the attorney general's office [are sufficient]," Farrin said. "We already have the processes in place that these issues can be discussed if there's a true impact on the bill. This is another layer we don't need."

In Maryland, legislative leaders earlier this year launched a pilot program to give lawmakers racial impact assessments of criminal justice bills, to be performed by nonpartisan analysts

at the state Department of Legislative Services with help from Bowie State University and the University of Baltimore's Schaefer Center for Public Policy.

The program already is being used: A racial impact statement attached to a bill that would increase the penalties for the theft of firearms noted the disproportionate number of Black people who are arrested, charged and jailed in Maryland for gun crimes, and asserted that the firearms bill might worsen the disparities.

"Although there is insufficient data to assess the precise racial impact of House Bill 633, the provisions in this bill are likely to amplify the documented racial inequities and exacerbate current racial disproportionality rates and disparity ratios in Maryland," the assessment said. The bill died in committee.

Though Maryland's program applies only to criminal justice bills, state Del. Jazz Lewis, a Democrat from the Washington, D.C., suburbs who championed the statements, said he would "love to see it extended into other subject areas," such as education.

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"It would help us address systemic inequalities we see, like the school to prison pipeline. When you suspend or expel young people in the third grade, it increases the likelihood of them ending up in the criminal justice system," Lewis said.

"Policies have consequences," he added. "In not reviewing policies for their impact on racial minorities, you run the risk of major harm."

Nicole Porter, senior director of advocacy for the Sentencing Project, said George Floyd's murder and the protests that followed gave new urgency to the drive for racial impact statements.

"In the states that adopted racial impact [statements] in 2021, George Floyd impacted that," Porter said. "Certainly, in Maine, Maryland and Virginia, the conversations that happened in 2020, impacted that."

That a state such as Maine, with a population that is 94% White, would even consider requiring racial impact statements for such a broad spectrum of bills is an indication of how legislators' attitudes have shifted.

Porter said she was not surprised at Maine's move, noting that many Somali immigrants settled recently in some of the state's former mill cities, such as Lewiston.

“It’s not that Maine doesn’t have to deal with racial disparity and racial justice issues,” said Porter, also noting the state’s Native American community.

But attaching a racial impact statement to a bill is no guarantee that legislators will heed its findings. A 2015 Associated Press analysis of the Iowa law found that in some cases, bills that were expected to exacerbate racial disparities passed anyway.

The AP’s review of 61 racial impact statements issued since 2009 showed that six of 26 bills with statements predicting a disparate racial impact had become law. However, bills that were rated as having no effect or a mitigating effect on minority incarceration rates were nearly twice as likely to pass, the AP reported.

Former Iowa state Rep. Francis “Chip” Baltimore, a Republican who served eight years ending in 2018, said he didn’t find the racial impact statements particularly useful.

“I was chair of the House Judiciary Committee for five years,” he said in a phone interview. “I think the challenge is getting useful data that is actually predictive about what the impact may be.”

He said that because Iowa’s prison population is disproportionately Black, the racial analyses of a criminal justice bill “would come back saying it would have a disproportionate impact on minorities, but all it did was to extrapolate the current prison population.”

A report on the Iowa law published last year by the National Juvenile Justice Network, a nonprofit that focuses on racial disparities in juvenile incarceration, found that because the statements often came late in the process, advocates and lobbyists did not have enough time to make use of the information.

The group also said the enthusiasm and effort put into the racial impact statements in Iowa have waned in recent years, leading to fewer requests for the assessments.

Tracey Tucker, who oversees the group’s Youth Justice Leadership Institute, noted that the Iowa law requires a legislator to ask for the assessment, and said that request often comes after legislation has been through the committee process. “If it comes early enough, if there is documented data ... that could be a tool for advocates in the community to use,” she said.

Tucker said part of the problem is that there is no longer a legislative champion for the Iowa law. Former Iowa state Rep. Wayne Ford, the Democratic sponsor of the measure and one of the state’s few Black legislators when it passed, retired in 2011.

“Since my retirement, no one is going to take on my pet project,” Ford said in a phone interview with Stateline. Ford noted that when his bill became law, Democrats controlled state government and now Republicans do, meaning the political atmosphere is not as hospitable for it.

But, he said, the enthusiasm in other states, based on events, is giving him hope. “George Floyd had a great deal to do with it,” he said. “We have some things starting up again.”