RACIAL EQUITY IMPACT NOTE

DEPARTMENT OF LEGISLATIVE SERVICES
MARYLAND · GENERAL · ASSEMBLY

2023 Session
HB1281

Task Force to Study Crime Classification and Penalties

Bill Summary

As introduced, this bill establishes the Task Force to Study Crime Classification and Penalties. The task force must study and make recommendations regarding classifying and categorizing crimes and civil offenses under State law.

Racial Equity Impact Statement

While the bill's creation of a task force to study crime classifications in the State's criminal code does not directly have an equity impact, any subsequent reforms based on those recommendations have the potential to impact existing inequities in the criminal justice system. The nature and magnitude of the impact would depend on the reforms implemented.

Analysis

As introduced, the bill would reestablish the Task Force to Study Crime Classification and Penalties, originally established by Chapter 372 of 2019. The task force is required to make recommendations regarding the current statutory scheme for criminal and civil violations throughout Maryland law, including:

- whether there are violations that should be reclassified as civil offenses, misdemeanors, or felonies;

- whether there are penalties that should be altered;

- whether the State would benefit from the imposition of standardized crime classifications and penalties, the codification of a default mental state as an element of criminal liability, and the codification of affirmative defenses and their elements;

- whether statutory changes are necessary for provisions of criminal law that lack an explicit *mens rea*; and

- what limitations, if any, should be placed on the ability of administrative boards, agencies, local governments, appointed commissioners, or of other persons or entities to enact rules, regulations, ordinances, or laws providing for criminal penalties.

The original task force was unable to complete its work due to the COVID-19 pandemic and in its final report recommended that the General Assembly:

(1)   extend the work of the task force for a period of one year and authorize the task force to obtain technical and research assistance;

(2)   adopt a standard crime classification system and consider a default *mens rea* for appropriate criminal offenses in the State; and

(3)   define and distinguish misdemeanor and felony offenses.

According to the American Law Institute, standardized crime classification systems generally increase uniformity in statutory application and decrease the potential for abuse of discretion or inequities brought about by inconsistent statutory interpretations. Crime classifications have both substantive and procedural consequences for those individuals involved with the criminal justice system. For example, in many state statutes, including Maryland, the required mental state (*mens rea*) to establish culpability for a violation is not always explicitly included in the statutory language.

The Model Penal Code published by the American Law Institute, and adopted in whole or in part by various states, defines four degrees of *mens rea*: purposefully; knowingly; recklessly; and negligently. The institute's best practices for state and federal statutes is to include a requirement that a clearly defined *mens rea* be included in the description of any offense in statute. Without this uniform or standardized approach, courts are left to determine what level of *mens rea* is required for a particular crime through methods such as discerning legislative intent, interpreting common law, and other sources.

The potential reclassification of misdemeanors and felonies contemplated by the bill could also be impactful as these classifications have meaningful outcomes. Individuals convicted of felonies in particular may experience significant collateral consequences as a result, such as losing the right to vote, disqualification from obtaining certain professional licenses, and a prohibition on legal gun ownership.

Conclusion

The task force established by the bill could assist the General Assembly with assessing the need for modernization or standardization of the State's criminal code. Standardizing criminal codes have generally been useful in jurisdictions to provide clearer guidance as to the nature of what actions are considered criminal by the state, whether or not and to what degree intent is an element of an offense, and the associated penalties. The bill's establishment of the task force itself does not have a direct equity impact, but the task force's work could provide clarity on existing equity issues in the criminal justice system.

Information Sources: American Law Institute; Department of Legislative Services

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Appendix – Maryland Demographics

Race and Ethnicity of the Maryland Population

Maryland's 2020 census population is 6,177,244, a 7% increase from the 2010 census count and approximately 2% higher than the 2019 census population estimates. In addition to an increase in population, Maryland's racial demographics have become more diverse. Maryland is now a state in which racial minorities make up a majority of its total population. Notable changes relevant to this shift are the increase in groups who identify as "other" and "multiracial" (*i.e.*, two or more racial identities), which total 5% of the State's population. Additionally, the change in demographics is due to the decrease in the number of individuals who only report "white" as their racial group. Despite this decrease, non-Hispanic whites remain the largest single race demographic group in the State of Maryland comprising 47% of the State's population.

Compared to the U.S. population overall, Maryland's population of individuals who identify as a single race is more diverse. Maryland is ranked as the fourth most diverse state by the U.S. Census Bureau's Diversity Index. As shown in **Exhibit 1**, in Maryland, 47% identify as white alone compared to 58% of the national population. Similarly, 51% of the population identify as non-white or multi-racial compared to 38% of the national population. In both the State and national population, the largest shares of the non-white population are individuals who are Black or African American, with 29% of the State population identifying only as Black or African American and another 2.5% identifying as Black in combination with some other race. Maryland's Asian population is 7%, which is slightly higher than the Asian share of the national population of 6%. The State's overall population by ethnicity, however, is slightly less diverse than the U.S. population; 12% of the State's population identified as Hispanic or Latino compared to 19% of the U.S. population.

Exhibit 1
U.S. and Maryland Population by Race and Ethnicity
2020
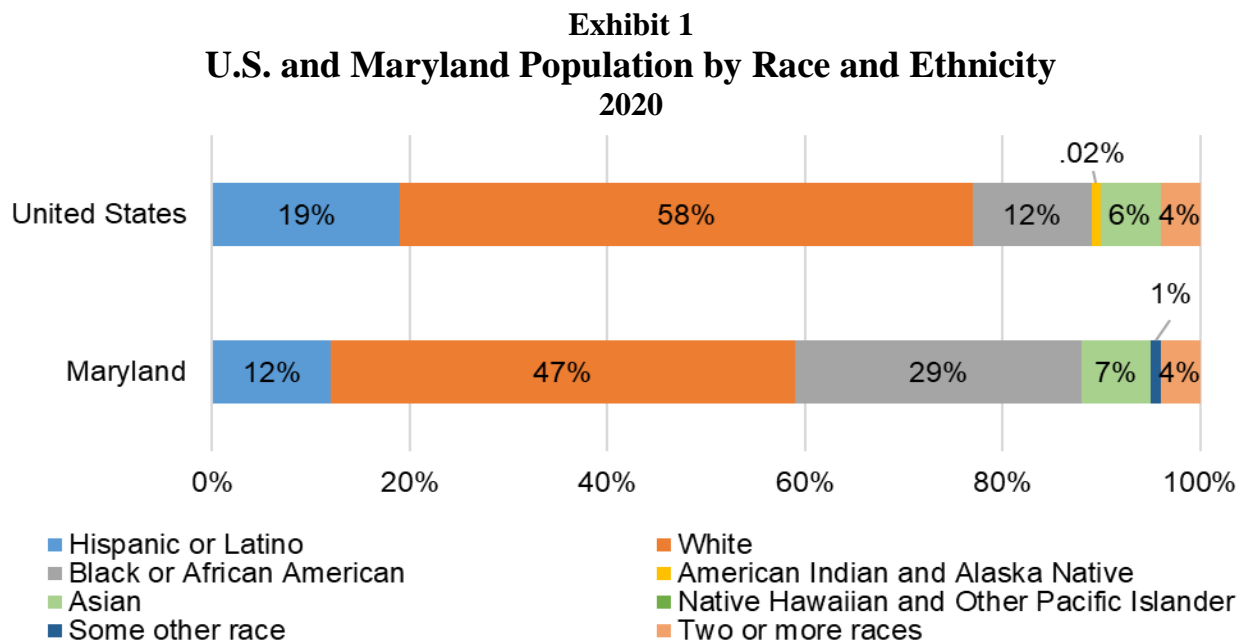
Source: U.S. Census Bureau, 2020 Census Redistricting Data (Public Law 94-171), Table ID P2, HISPANIC OR LATINO, AND NOT HISPANIC OR LATINO BY RACE.