



MEMORANDUM

LEGISLATIVE REFERENCE BUREAU

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To: Ald. Ashanti Hamilton
From: Andrew VanNatta, Legislative Fiscal Analyst - Associate
Date: January 29, 2014
Subject: Minority Impact Reports.

You had requested information relating to the passage of legislation requiring the filing of minority impact reports. Provided below is a summary of existing legislation in other states – including need, rationale and legislative details – and recent proposals in Wisconsin. Also at your request, attached are copies of the legislation and examples of filed reports.

Rationale

According to the NAACP's Criminal Justice Fact Sheet, between 1980 and 2008, the number of Americans incarcerated in state or federal prison more than quadrupled (from roughly 500,000 to 2.3 million). If those under parole or probation supervision are included, roughly 3.2% of the American population is under correctional control. The NAACP further notes that racial disparities are common in the United States' criminal justice system. For instance:

- In 2008, African-Americans and Hispanics made up approximately 25% of the American population but comprised 58% of its prison population.
- African-Americans are incarcerated at nearly 6 times the rate of Caucasians.
- If current trends continue, one in every 3 black males born today can expect to spend time in prison during his lifetime.

The development of racial and ethnic impact statements (REIS, also called minority impact reports) is an attempt to address these issues. REIS are documents used to predict and potentially help alleviate any negative consequences of crime- or correctional-related policies on minorities. Often compared to fiscal or environmental impact statements, REIS aid legislators and the public in anticipating any racial disparities which might occur in proposed legislation.

According to a 2010 article in Drake Law Review by David A. Rossi, REIS answer two questions. First, "*would an increase in racial disparity resulting from passage of the proposed legislation seem justified if I look at it from a public safety viewpoint?*" Second, would alternative policy choices address the problem at hand without racially disparate effects? As a recent concept in state legislation, REIS typically focus on sentencing policy, but the concept has implications beyond corrections. The practice of adopting open and thoughtful dialogue before a piece of legislation takes effect is another positive attribute of REIS legislation.

Recent Examples

The nation's first REIS legislation was signed into law in Iowa in 2007. The law was developed in response to a report by The Sentencing Project, a national nonprofit research and advocacy group, which noted the state's high African-American incarceration rates. At the time of the report, African-Americans made up just 2.7% of Iowa's population, but accounted for 24% of the state's prison population. According to the report, Iowa's African-Americans-to-Caucasian incarceration ratio was 13.6 to one, the highest in the nation at the time (the national average was 5.6 to one). According to the Drake Law Review report, Iowa uses REIS "*when new public offenses are created, when penalties for existing public offenses are changes, and when changes are made to sentencing, parole, or probation procedures.*"

Protocol for Iowa's REIS was developed by the Iowa Legislative Services Agency (LSA) and the Division of Criminal and Juvenile Justice Planning in the Department of Human Rights through consultation with the state's Judicial Branch and Department of Corrections. Statements are prepared by the LSA's Fiscal Services Department. To determine if legislation will have a disparate impact on minorities, Iowa's REIS legislation requires factual information concerning:

- The estimated number of criminal cases per year the legislation will affect.
- The fiscal impact of confining persons under the legislation.
- The legislation's impact on existing correctional institutions, community-based correctional facilities and services, and jails.
- The likelihood the legislation will create a need for additional prison capacity.

The law also requires a legislative committee report to state if an REIS is required when sent to the floor. The LSA must also review all bills, joint resolutions and amendments placed on the calendar of either chamber to determine if an REIS is needed, and legislators may request an REIS. Because existing staff incorporate the work into existing correctional impact and fiscal notes, no additional costs have been incurred in Iowa.

Since Iowa's law was enacted, two other states have developed similar legislation: Connecticut in 2009 and Oregon in 2013. At the time, Connecticut ranked 4th in racial disparity, and in Oregon, African-Americans made up 9% of the state's prison population despite being less than 2 percent of the overall state population. In Connecticut, an REIS is only produced if requested by a majority of committee members in whichever committee controls the proposed bill. Only one REIS has been written so far. The state of Minnesota also commonly uses REIS, but these are not required by law.

Table 1 provides information on recent legislation regarding the use of REIS. According to a July, 2013, article by Maggie Clark, staff writer for the Pew Charitable Trust, lawmakers from 29 states have spoken with Wayne Ford, the former Iowa state representative who sponsored its 2007 bill, about adopting similar legislation. Recent attempts to pass REIS legislation in Arkansas, Maryland and Texas have failed, and in 2011, the Illinois legislature created a task force to study how the collection and analysis of racial and ethnic data might be standardized by state and local law enforcement agencies.

Table 1. Recent legislation regarding the use racial and ethnic impact statements.

STATE	YEAR	STATUTE	ADMINISTRATOR	APPLICATION	NOTES
Arkansas	2013	Senate Bill 1093 Did not pass	Office of Economic and Tax Policy	Crime bills.	Would have also been prepared for juvenile crime bills.
Connecticut	2009	House Bill 6581	Office of Legislative Research and the Office of Fiscal Analysis	Bills that increase or decrease the population of state correctional facilities.	Prepared only on request of legislative committee. Has only been 1 bill for which an REIS has been requested. Major limitation is the quality of criminal justice data available.
Illinois	2011	Senate Bill 2271	This bill created a Racial and Ethnic Impact Research Task Force to determine " <i>a practical method for the standardized collection and analysis of data on the racial and ethnic identity of arrestees by State and local law enforcement agencies.</i> "		
Iowa	2007	House File 2393	Legislative Services Bureau	1. Crime bills. 2. Applicants for grants from state must provide REIS.	HF 2393 became law July 1, 2008 (FY 2009).
Maryland	2012	Senate Bill 679 Did not pass	Department of Legislative Services	Crime bills.	Unfavorable report by the Senate Rules Committee.
Minnesota	2006	None	Minnesota Sentencing Guidelines Commission	Crime bills.	REIS are provided when MSGC staff identifies a disparate racial impact in the course of preparing fiscal impact. The REIS are created separately from the fiscal impact statement.
Oregon	2013	Senate Bill 463	Oregon Criminal Justice Commission	1. Criminal offender population. 2. Recipients of human services. 3. Applications for grants awarded by state agencies.	Law took effect January 1, 2014. No REIS have been requested thus far.
Texas	2009	House Bill 930 Did not pass	Legislative Budget Board	Crime bills.	Bill did not make it out of committee.
Wisconsin	2014	LRB draft 2705	Joint Review Committee on Criminal Penalties	Crime bills.	
Milwaukee County	2014	Pending	TBD	All resolutions, contracts and grants greater than \$300,000.	Resolution passed unanimously by Judiciary, Safety and General Services on January 23. Goes before County Board for approval on February 6.

Local Discussion

According to a 2013 report by the University of Wisconsin-Milwaukee's Employment and Training Institute, "*changes in laws contributing to mass incarceration of lower-risk offenders and alternatives to imprisonment...are critically needed.*" This report also notes that:

- Between 1990 and 2012, over half of black men in their 30s in Milwaukee County have been in state prison.
- One out of 8 African-American men aged 18-64 was in a state prison or local jail in April 2010, nearly double the national average and one-third higher than the next worst state, despite making up 6.5% of the state's population.
- Two-thirds of Milwaukee County's incarcerated black men come from just 6 zip code areas.

Wisconsin also has the highest rate of Native American men behind bars (one in 13) and, according to a June 2013 report by the ACLU, is one of the nation's top 5 most racially disparate states, in terms of the likelihood to be arrested for marijuana possession.

These facts have prompted both state and local policy-makers to develop their own REIS legislation. At the state level, legislation has recently been proposed which requires that "*any bill that creates a new crime, modifies an existing crime, or modifies the penalty for an existing crime must have a racial impact statement,*" according to a January 16, 2014, press release.

A similar proposal is taking shape in Milwaukee County, although it doesn't relate to crime, specifically. A resolution sponsored by Supervisor Khalif Rainey goes before the County Board on February 6, 2014. This resolution requires that "*all resolutions, grants and contracts with a fiscal impact greater than \$300,000 include a completed Minority Impact Statement prior to Milwaukee County Board approval.*" If adopted, the Director of the Office of Community Business Development Partners, in conjunction with the Corporate Counsel, will develop an ordinance and related procedures no later than the Board's March, 2014, meeting cycle. The resolution is targeted at addressing local disparities among women, African-Americans, Hispanics, Asian and Pacific islanders, Native Americans and Alaskan Natives, and the elderly and disabled.

-Attachments.

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