

# Criminal Justice Racial and Ethnic Impact Statements

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## Abstract

Lawmakers are tasked with making decisions about important policy changes. When making these decisions, lawmakers consult a variety of information including discussions with key stakeholders, consideration of public testimony, and analysis of available data. Understanding the potential impacts of a policy change, good or bad, is necessary to make informed policy decisions.

Increasingly, lawmakers have access to a variety of impact statements that serve to predict the likely effects of policy changes such as financial impact statements and health impact statements. This report provides an overview of a new type of impact statement – Racial and Ethnic Impact Statements (REISs) – which seek to anticipate the potential impacts of policy changes on different racial and ethnic groups.

This report begins with a discussion of the purpose and use of REISs and an overview of the different characteristics of the processes for producing REISs as implemented in other states. The report then discusses previous work regarding the use of REISs in Washington and provides a look at historical trends of disproportionality in arrests, convictions, and incarceration in Washington.

This report concludes with an outline of the processes that the Public Safety Policy and Research Center (PSPRC) intends to use to begin producing REISs for proposed legislation involving criminal justice reforms starting in the 2025 Legislative Session as a service for the Sentencing Guidelines Commission (SGC). Currently, the production of REIS for the legislative session will be limited to the available capacity of the PSPRC. We expect that, in the first year, we will be able to produce statements for 3-5 legislative proposals per legislative session.

## Racial and Ethnic Impact Statements

Lawmakers are increasingly cognizant of the potential impacts of proposed policy changes. To the extent possible, policymakers seek to anticipate intended and unintended consequences of policy change to proactively maximize the effectiveness of policy change and minimize identifiable, avoidable costs. For example, the federal government has required environmental impact statements when pursuing policy change related to the environment.<sup>1</sup> Similarly, Washington requires fiscal impact statements for proposed legislation expected to impact state costs<sup>2</sup> and Legislators are able to request Health Impact Reviews for policies that may impact public health.<sup>3</sup>

A racial and ethnic impact statement (REIS) is a new type of impact statement that seeks to anticipate the effects that a particular policy reform will have on the demographic composition of justice-involved populations.<sup>4</sup> These statements serve to, “encourage lawmakers to examine the racial effects of changes in sentencing and related policy that affect prison populations, and when necessary, to consider alternative means of achieving public safety goals without exacerbating unwarranted racial disparities.”<sup>5</sup> Increasingly, states across the country are establishing policies to require the production of REIS in varying policy areas. The processes for producing REISs varies from state to state.

This section provides an overview of the purpose of REISs and the current landscape of REIS policies in the United States, particularly as they apply to policies related to the criminal justice system.

### Purpose and Use of REISs

Disproportionality<sup>6</sup> has long existed in the criminal justice system, and lawmakers are increasingly focusing on disproportionate outcomes in the system. Unfortunately, it can take years to identify disproportionate outcomes that result from a particular policy option. In addition, different factors that contribute to disproportionality may be compounding, making it difficult to undo disproportionate effects of past policies or to identify the primary cause(s) of these outcomes.

Recently, Washington introduced multiple proposals that attempt to address previously enacted policies known to have a disproportionate impact on people of color. However, retroactive policies are often met with resistance due to the high cost and resource burden for the courts associated with resentencing and other retroactive policy changes and concerns for retraumatizing victims.<sup>7</sup>

REISs provide additional information about the potential for disproportionate effects of a proposed policy while bills are still moving through the legislative process, before they would become law.

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<sup>1</sup> [40 CFR 1508.1](#)

<sup>2</sup> [Chapter 43.88A RCW](#)

<sup>3</sup> [Washington State Board of Health website for Health Impact Reviews.](#)

<sup>4</sup> American Law Institute. (2023). Model Penal Code: Sentencing. United States: American Law Institute.

<sup>5</sup> Mauer, M. (2007). Racial impact statements as a means of reducing unwarranted sentencing disparities. *Ohio State Journal of Criminal Law*, 5, 19.

<sup>6</sup> In this report, we define disproportionality as a state of being such that the percentage of a group in one population differs from the percentage of that group in another population.

<sup>7</sup> Opponents of retroactive policy changes in the criminal justice system often speak about the closure that is afforded victims when a final judgement and sentence is issued in a case. When that final judgement is reexamined years later, victims may once again be exposed to the traumatizing details of their case and the additional trauma that may come from the court determining the perpetrator of their offense would be released from incarceration earlier than expected.

Importantly, REISs do not provide recommendations about passage of particular legislation. Rather, the information included in an REIS may be used by lawmakers to consider whether the potential benefits of a policy justify the potential costs. These decisions are values-based decisions and lawmakers may decide that an anticipated cost is warranted to achieve another policy goal.<sup>8</sup>

## REISs in the United States

Nationwide, interest has significantly increased in the production of racial and ethnic impact statements for criminal justice policies. In the newest edition of the Model Penal Code: Sentencing (2023), the American Law Institute included the development of impact statements for legislation modifying criminal punishments as a key provision in the recommendations to state legislatures.<sup>9</sup> At least twenty-eight states have proposed policies related to the production of racial and ethnic impact statements since 2007 with at least eight states enacting legislation establishing formal REIS processes. In addition to the states with legislative policies, additional states have initiated pilot programs or resolutions endorsing the informal production of REISs. For example, Minnesota's Sentencing Guideline's Commission began producing racial impact statements without a legislative mandate.

The characteristics of REIS processes vary by each state. Prior research has produced several in-depth reviews of the legislation in other jurisdictions.<sup>10</sup> In this section, we briefly describe some of the core features of REISs. Appendix A provides a more comprehensive description of the characteristics of REISs for states that have passed laws establishing a formal process for producing REISs for their state legislature.

### Initiation of REIS Production

In some jurisdictions, the production of an REIS is based on statutory language outlining when a statement must be produced. For example, New Jersey requires REIS for legislation affecting pretrial detention, sentencing, probation, or parole populations.

Other states use a request-based structure in which certain individuals and/or committees may request an REIS to be produced for proposed legislation. For example, in Colorado, the Speaker of the House of Representatives, President of the Senate, or minority leaders of the House of Representative or the Senate may request an REIS. In Illinois, an REIS may be requested by any member of the legislature.

### Scope of REIS

Jurisdictions vary in the types of legislation eligible for the production of an REIS and the populations that must be discussed in a statement. With regard to REISs related to criminal justice, some states limit the production to legislation that impacts a particular part of the criminal justice system or justice involved populations. For example, in Iowa, REIS may be produced for legislation changing existing penalties, introducing new penalties, or that change procedures for parole, sentencing, or probation.

Some jurisdictions include explicit language about the populations that should be examined in an impact statement, and, in some cases, the language goes beyond just identifying racial and/or ethnic groups. For

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<sup>8</sup> Maurer, 2007. American Law Institute, 2023.

<sup>9</sup> American Law Institute, 2023, Section 8.07.

<sup>10</sup> See: Nielson, J. (2023). The Slow Race: Achieving Equity Through Legislative and Agency Minority Impact Statements. *Minnesota Journal of Law & Inequality*, 41(2), 45,

example, Iowa law indicates that impact statements should include consideration of disproportionate impacts for women, people with disabilities, African Americans, Latinos, Asians or Pacific Islanders, American Indians, and Alaskan Native Americans.

### **Limits on REIS production**

In most jurisdictions, there is no limit to the number of REISs that may be produced in a legislative session. However, in some of the states using a request-based structure, there are limitations on the number of statements that may be requested. For example, in Colorado, the aforementioned legislators authorized to request an REIS are limited to five requests per year.

### **Required Format and Information**

Some jurisdictions specify the types of information that must be included in an REIS. For example, Connecticut requires a statement about whether a proposed policy action will have a disparate impact on the composition of incarcerated populations as well as an explanation of why or why not. Both Oregon and Illinois require statements to include a discussion of the methodologies and assumptions used to create estimates in the REIS. In other jurisdictions, the type of information that must be included is not statutorily prescribed and up to the discretion of the agency producing the REIS.

### **Data Sources**

Access to data is necessary to produce reliable impact statements. Some state legislation prescribes which data must be made available or used for the production of REISs. For example, Oregon directs the Criminal Justice Commission (CJC) to complete REISs using data housed in their Statistical Analysis Center (SAC). Other states, such as Connecticut, Colorado, and Virginia direct state agencies to provide data on an ad-hoc basis when needed to complete an REIS.

## Racial and Ethnic Impact Statements in Washington

Over the last decade, several proposals have been put forth regarding the development and use of REISs in Washington. However, no mandate for the production of an REIS for proposed legislative changes has passed to date. Like other states across the country, Washington has a history of disproportionate representation of people of color in nearly all steps of the criminal justice system compared to their representation in the general population. As such, lawmakers in Washington could benefit from a proactive understanding of how new legislation may differentially impact communities across the state.

This section reviews prior work on REISs in Washington as well as trends in the racial composition of the Washington criminal justice system over the past decade, setting the foundation for introducing impact statements in future legislative sessions.

### Early Legislative Developments (2013-2016)

In 2013, the SGC established a subcommittee to examine the potential use of racial and ethnic impact statements for legislative changes to state sentencing laws. After reviewing research on REISs and discussing the location and availability of data, the SGC recommended that the Caseload Forecast Council (CFC), in collaboration with other agencies, establish a procedure for the provision of racial and ethnic impact statements on legislation that would potentially affect the racial and ethnic composition of the criminal justice system.

In the following legislative biennium (2015-2016), there were several proposals related to the production of racial disproportionality research on felony sentencing and the potential integration of REISs (see Figure 1). However, these proposals failed to pass at various stages of the legislative process.

In 2016, the language from Substitute Senate Bill 5752 was passed as a budget proviso in the Supplemental Operating Budget.<sup>11</sup> This proviso directed the CFC to work with other state agencies to “develop recommendations for procedures and tools which will enable [the CFC] to provide cost-effective racial and ethnic impact statements to legislative bills affecting criminal justice, human services, and education caseloads.” The proviso requested that the recommendations identify the positive and negative effects on different communities resulting from proposed legislation.

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<sup>11</sup> [Second Engrossed Substitute House Bill 2376, Chapter 36, Section 125\(2\), Laws of 2016](#)

**Figure 1. Timeline of Racial and Ethnic Impact Statement Legislation in Washington**

	Bill No	Title	Summary
2013/2014	<a href="#"><u>SB 6257</u></a>	An act relating to sentencing information concerning racial disproportionality.	Would require CFC to produce an annual summary of racial disproportionality with adult felony sentences and juvenile adjudications.
	<a href="#"><u>HB 1885</u></a>	Addressing and mitigating the impacts of property crimes in Washington State.	Original bill would establish the Washington Justice Commission tasked with, among other things, preparing REISs at the request of a member from either of the major two caucuses in either chamber.
	<a href="#"><u>SHB 2076</u></a>	Regarding information concerning racial disproportionality.	Would require the CFC to establish a process for producing REISs at the request of any legislator for legislation related to the criminal/juvenile justice systems(s). Also allowed for legislators to request REISs for all other types of legislation if information is available.
	<a href="#"><u>SSB 5752</u></a>	Regarding information concerning racial disproportionality.	Would require the CFC to work with other agencies to develop recommendations for the processes and procedures for developing REISs for bills related to criminal justice, human services, and education.
2015-2016	<a href="#"><u>2SSB 5755</u></a>	Addressing and mitigating the impacts of property crimes in Washington State.	Would reestablish the SGC as a state agency and require the SGC to, among other things, produce REISs at the request of a member from either of the major two caucuses in either chamber for legislation impacting the criminal justice populations or recipients of human services.
	<a href="#"><u>SB 6143</u></a>	Concerning the sentencing of offenders.	Would reestablish the SGC as a state agency and require the SGC to, among other things, produce REISs at the request of a member from either of the major two caucuses in either chamber for legislation impacting the criminal justice populations or recipients of human services.
	<a href="#"><u>SB 6641</u></a>	Addressing and mitigating the impacts of property crimes in Washington State.	Would reestablish the SGC as a state agency and require the SGC to, among other things, produce REISs at the request of a member from either of the major two caucuses in either chamber for legislation impacting the criminal justice populations or recipients of human services.
	<a href="#"><u>ESSB 5588</u></a>	Developing information concerning racial disproportionality.	Would require the CFC to establish a process for producing REISs for legislation modifying adult felony sentencing to be included with fiscal notes.
	<a href="#"><u>SHB 1264</u></a>	Establishing an equity impact statement for legislative proposals	Would require OFM to develop procedures, guidelines, content, and format requirements for Equity Impact Statements with a phased in approach, starting with legislation impacting housing or health care and then expanding to education policies, tax policies, and additional policy areas of OFM's choosing.
2017-2018			
2021-2022			



## 2016 CFC Report

To fulfill the Legislative request, the CFC conducted a data inventory for the availability of race data in the policy areas of criminal justice, human services, and education. The CFC also conducted a survey of state agencies identified by the legislature to gather feedback about the agencies' opinions on the procedures for producing REISs in Washington.<sup>12</sup>

In their final report to the Legislature,<sup>13</sup> the CFC identified four primary findings:

1. Agencies emphasized the importance of subject matter expertise and indicated a general preference to have REISs produced by agencies involved in a particular policy area, rather than by an external organization (such as CFC).
2. The policy area of criminal justice was likely the best selection for piloting the development of REISs before expanding to other policy areas.
3. Agencies preferred that specific conditions be established to determine when an REIS is produced.
4. REISs primarily rely on a cost-effective, quantitative approach to ensure quick turnaround and availability of information during the legislative process.

The CFC concluded that the best approach would be to initiate the development of REISs with a pilot project focused on criminal justice legislation.

## Recent Legislative Developments (2017 – 2024)

In 2017 and 2018, the Legislature considered a bill that would require the CFC to produce REISs for legislation impacting adult felony sentencing and submit the REIS along with the respective fiscal notes.<sup>14</sup> Ultimately the legislation failed to pass in either session.

In 2021, the Legislature considered a bill that would require the Office of Financial Management (OFM) to develop standards for the production of Equity Impact Statements.<sup>15</sup> Unlike other proposals, this bill would require that an Equity Impact Statement include a description of the potential effects on different groups of individuals based on race, creed, national origin, citizenship or immigration status, sex, veteran/military status, sexual orientation, disability status, language access status, and/or socioeconomic status. The bill included a phased approach that would begin with legislative proposals related to housing and healthcare, then expand to legislative proposals on K-12 education and tax policy, as well as two other policy areas selected by OFM. The bill would then expand the scope to all legislation for which a fiscal note is requested or if requested by a legislator. Ultimately this legislation failed to pass in the biennium.

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<sup>12</sup> The Legislature directed the CFC to coordinate with the following agencies: OFM, DOC, Department of Social and Health Services (DSHS), AOC, Minority and Justice Commission, WSIPP, Department of Early Learning (DEL), Washington Student Achievement Council (WSAC), State Board of Education (SBE), and the SGC.

<sup>13</sup> Caseload Forecast Council. (2016). *Report to the Legislature: Racial and Ethnic Impact Statements. 2ESHB 2376 Section 125(2) Passed by the 2016 Legislature*. Olympia, WA.

<sup>14</sup> [Engrossed Substitute House Bill 5588](#), 2018 Legislative Session

<sup>15</sup> [Substitute House Bill 1264](#), 2021 Legislative Session

While the original bill failed to pass; the concept was reintroduced in a budget proviso that passed in 2021. The proviso directed OFM to develop recommendations for establishing a procedure for producing equity impact statements for legislative proposals. OFM contracted with ECONorthwest who assisted with oversight of an inter-agency steering committee to discuss recommendations for Legislative Equity Assessments (LEAs). The final report introduced two potential pathways for production – one similar to fiscal notes by which OFM would notify impacted agencies which would then submit a response using a standard form about the potential equity assessment and an alternative which would task non-partisan committee staff with completing a standard form prior to a policy committee public hearing.<sup>16</sup> Similar to the prior CFC study, the 2021 report suggested phasing in equity assessments across different policy areas. Finally, the appendix of the report presents a potential Legislative Equity Assessment Tool form that could be used as a standard for all LEAs.

To date, there are no legislative mandates for the development and production of REIS for legislative proposals.<sup>17</sup> However, the production of REIS continues to be of interest to the Legislature, state agencies, and other stakeholders like the SGC and state Task Forces such as the Criminal Sentencing Task Force.<sup>18</sup>

## The Washington State Context

Comprehensive data on disproportionality in Washington’s criminal justice system is limited. However, various state agencies do produce annual reports with data disaggregated by race.<sup>19</sup> These data provide some insight to the current state of disproportionality in Washington.

This report assesses general disproportionality by calculating the disproportionality ratio for arrests, felony convictions, and incarceration in Washington State.

For each outcome, we calculate the disproportionality ratio as the percentage of each racial group in the population of interest (e.g., those arrested) divided by the percentage of the racial group in the general Washington State population. Figure 2 illustrates the interpretation of the disproportionality ratio.

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<sup>16</sup> Office of Financial Management (2022). “Equity Impact Statement Tools and Procedures.” Prepared for the Office of Financial Management by ECONorthwest. Olympia, WA.

<sup>17</sup> In 2018, the Washington State Legislature directed the CFC to provide an annual disproportionality report prior to each legislative session but has made no directive related to the production of racial and ethnic impact statements.

<sup>18</sup> In 2020, the CSTF reached consensus on a recommendation to the legislature to require the production of racial impact statements for criminal justice reforms. See Recommendation 4 in: Washington State Criminal Sentencing Task Force: December 2020 Report. William D. Ruckelshaus Center; Olympia, WA.

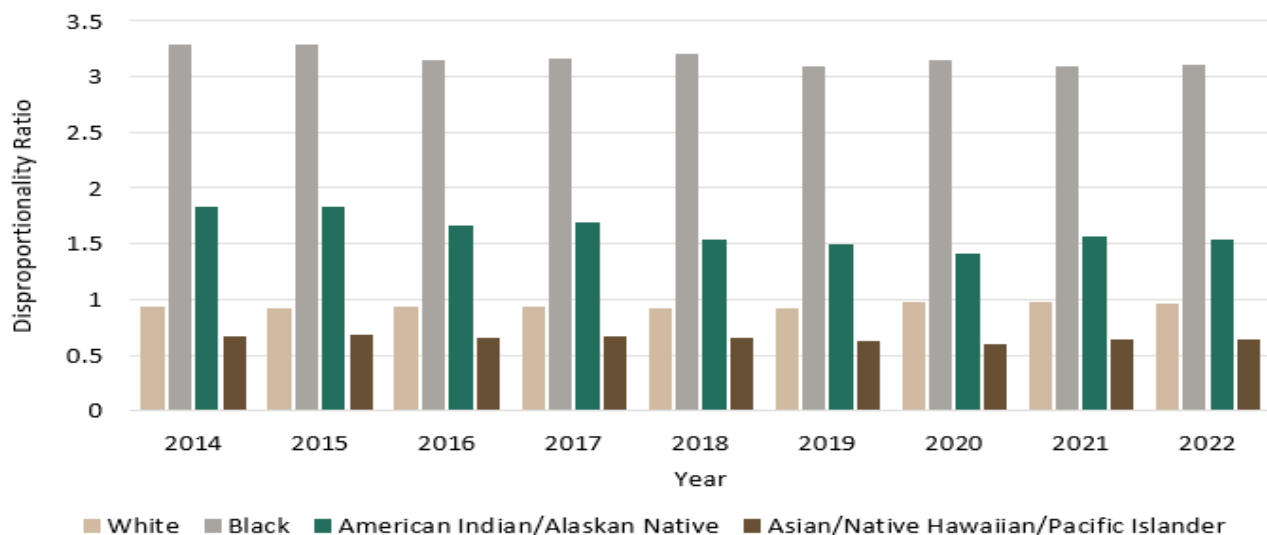
<sup>19</sup> General population data were pulled from the Office of Financial Management’s population estimates, available online at: <https://ofm.wa.gov/washington-data-research/population-demographics/population-estimates/estimates-april-1-population-age-sex-race-and-hispanic-origin>. For calculating the population estimates, we include only the adult population aged 18-54 to align with the typical at-risk population for criminal justice system involvement. Arrest data were pulled from the WASPC’s annual Crime in Washington reports available online: <https://www.waspc.org/cjis-statistics---reports>. Conviction data were pulled from the CFC’s annual Statistical Summary of Adult Felony Sentencing, available online: <https://cfc.wa.gov/publications>. Prison population data were provided by the DOC. The most recent quarterly reports are available online at <https://www.doc.wa.gov/information/records/publications.htm#fact-sheets>. Population data and arrest data are reported for each calendar year. Conviction data are reported for each fiscal year. Prison population data was pulled from the annual population snapshot published on June 30 of each calendar year.

**Figure 2. Interpretation of a Disproportionality Index**

General Population	Population of Interest (e.g., prison population)	Disproportionality Index (orange group)	Interpretation
		1.00	The group is equally represented in the general population and the population of interest.
		1.67	The orange group is overrepresented in the population of interest. There are 67% more orange people in the population of interest than the general population.
		0.67	The orange group is underrepresented in the population of interest. There are 33% fewer orange people in the population of interest than the general population.

For arrests, convictions, and the prison populations, Blacks and American Indian/Alaskan Natives have consistently been overrepresented from 2014 through 2022.<sup>20</sup> While the disproportionality ratio was similar for arrests and convictions, the ratios were exacerbated within prison populations. These statistics establish a clear trend of overrepresentation for people of color in Washington’s criminal justice system, highlighting the need for proactive consideration by decisionmakers of how policies may add to these trends. Annual trends by race are presented in Figures 3-6.

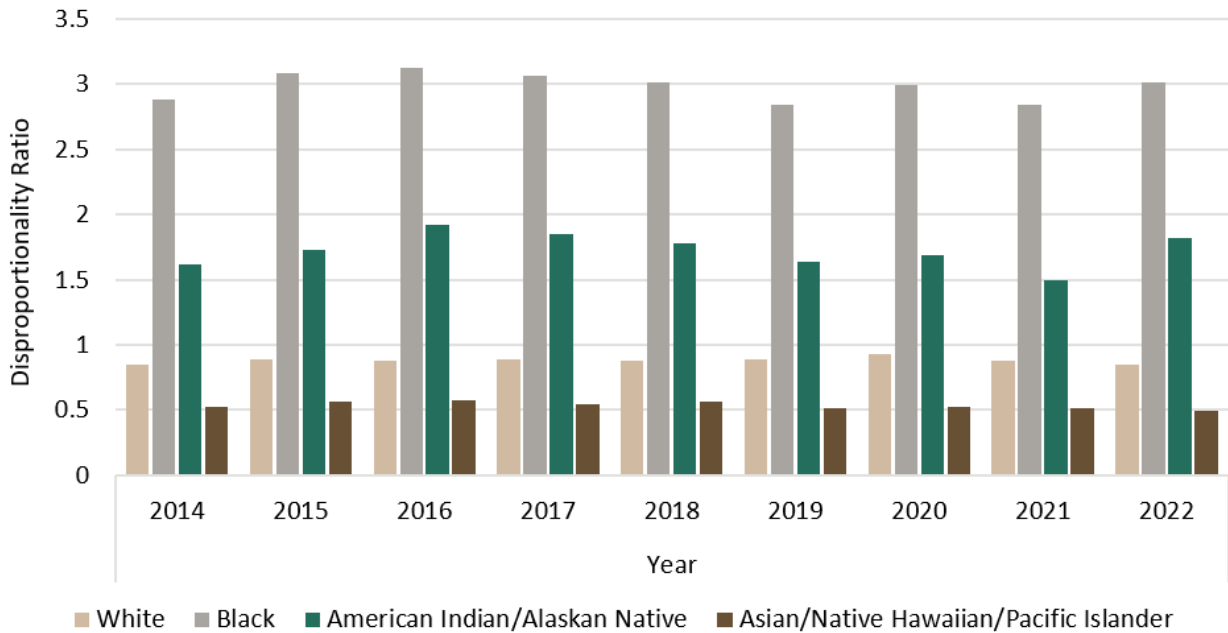
**Figure 3. Disproportionality Ratio – Arrests in Washington, 2014 - 2022**



**Note:** Arrest data were pulled from the Washington Association of Sheriffs and Police Chiefs (WASPC) annual Crime in Washington (CIW) reports.

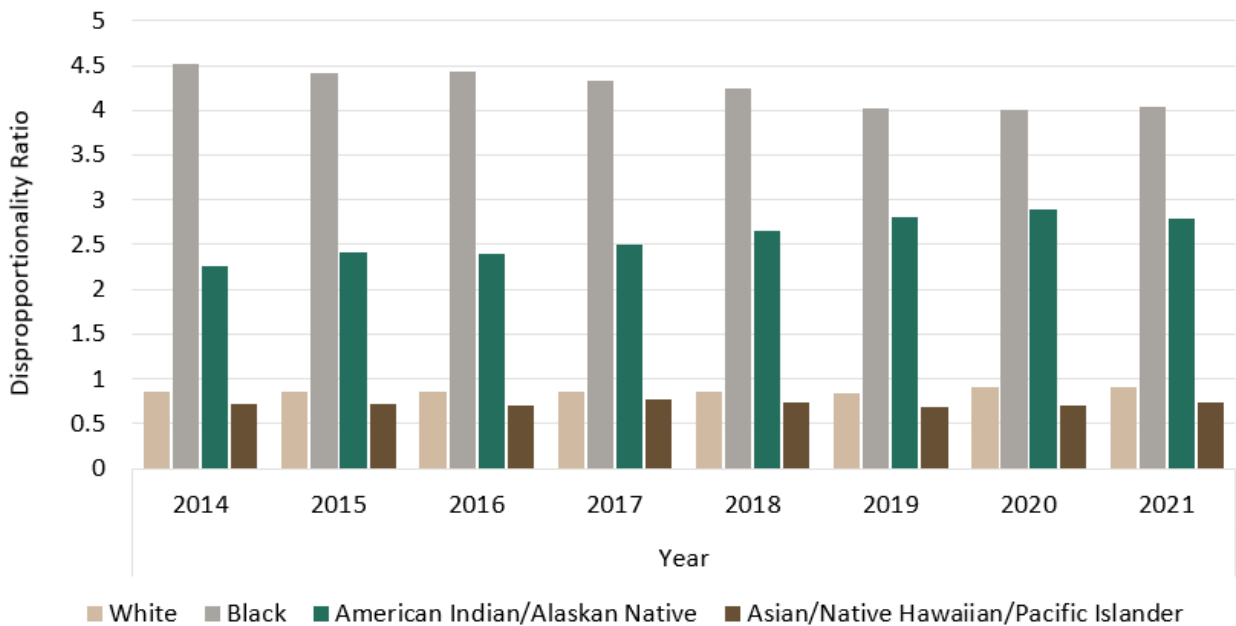
<sup>20</sup> DOC changed their reporting practices for race in 2022. As such, we only report the disproportionality ratio for incarceration through 2021.

**Figure 4. Disproportionality Ratio – Felony Convictions in Washington, 2014 – 2022**



**Note:** Conviction data were pulled from the CFC’s annual Statistical Summary of Adult Felony Sentencing.

**Figure 5. Disproportionality Ratio – Prison Population in Washington, 2014 – 2021**



**Note:** Prison population data were provided by the Department of Corrections (DOC) from their quarterly population reports. DOC changed their reporting practices for race in 2022. As such, we only report the disproportionality ratio for incarceration through 2021.

## PSPRC's Production of REISs for Criminal Justice

Established in 2022, the Public Safety Policy and Research Center (PSPRC) is housed in the Forecasting and Research Division of the Office of Financial Management (OFM). Consistent with the duties of OFM, the PSPRC operates as a source for public safety data, research, and statistical analyses to inform decisions made by the Governor, the Legislature, and other state agencies. The PSPRC includes the Criminal Justice Research and Statistics Center (the WA SAC – CJRSC),<sup>21</sup> the SGC,<sup>22</sup> the Sex Offender Policy Board (SOPB),<sup>23</sup> and the Traffic Records Integration Program (TRIP).<sup>24</sup>

As a dedicated criminal justice and public safety research center, the PSPRC is well positioned to produce and distribute REISs related to criminal justice policy. The PSPRC staff have training and expertise in the broad spectrum of the criminal legal system, not just one portion or agency. In addition, with the SGC and SOPB, the PSPRC's network includes work with representatives from all agencies involved in the various steps of the criminal legal system. Two of the PSPRC's foundational goals are to 1) promote research and policy with equity lenses and 2) to provide an easy, one-stop access to criminal justice and human services data and information. The production of REISs for the SGC are directly aligned with the center's mission and the PSPRC is well situated to support this work.

During the 2024 Legislative Session, PSPRC staff discussed processes for developing REIS for proposed legislation related to criminal justice. In an initial test of the ability to produce these statements, the PSPRC completed its first REIS for Substitute Senate Bill (SSB) 5056 and provided the statement to the SGC during one of their special sessions to discuss legislation. The SGC elected to submit a copy of the REIS for SSB 5056 to the Community Safety, Justice, and Reentry committee in the House of Representatives as a part of their written testimony.<sup>25</sup>

The PSPRC has subsequently developed an initial plan for producing REIS for proposed criminal justice-related legislation beginning in the 2025 legislative session. The following section describes the PSPRC's planned initial approach for REIS. This approach may evolve over time as REISs are produced if the PSPRC identifies more efficient or effective approaches and/or additional workload capacity.

### Legislation Selection, Timing, and Distribution

REISs can provide valuable information for many different proposed criminal justice reforms during the legislative process, including changes in police procedures, sentencing laws, and correctional operations such as rehabilitative programming.

At this time, the PSPRC is limited in its ability to produce REISs within its current capacity and workload. As such, the PSPRC cannot commit to producing an REIS on all criminal justice legislation introduced in the Legislature.

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<sup>21</sup> [Washington's Criminal Justice Research & Statistics Center – the Statistical Analysis Center](#)

<sup>22</sup> [Sentencing Guidelines Commission](#)

<sup>23</sup> [Sex Offender Policy Board](#)

<sup>24</sup> [Traffic Records Integration Program](#)

<sup>25</sup> SSB 5056 was revived from the previous session and was previously voted out of the policy committee in the Senate. Thus, the bill was first discussed in a policy committee in the House of Representatives in the 2024 Legislation Session. The REIS for SSB 5056 is available online: [https://sgc.wa.gov/sites/default/files/public/SGC/publications/REIS\\_2024\\_SSB\\_5056\\_PSPRC.pdf](https://sgc.wa.gov/sites/default/files/public/SGC/publications/REIS_2024_SSB_5056_PSPRC.pdf)

Initially, the PSPRC will prioritize policies that impact sentencing at the direction of the SGC. The production of REIS for the legislative session will be limited to the available capacity of the PSPRC. With the support of the SGC, we expect that, in the four years (two short sessions and two long sessions), we will be able to produce statements for 3-5 legislative proposals. The SGC will identify legislation for which stakeholders are concerned the policy change would contribute to substantial racial disproportionality. The PSPRC will focus on policies that can be easily examined using existing data.<sup>26</sup>

When deciding whether or not to produce an REIS for a specific bill, the PSPRC will encourage the SGC to consider the following:

- **Public hearing schedules.** The PSPRC will examine only legislation scheduled for public hearing in a policy committee.
- **Likely disproportionate impact.** The PSPRC will seek input from SGC and SOPB members (as needed) to identify legislation for which practitioners have a theoretical basis for believing the policy change would contribute to substantial racial disproportionality.
- **Coordination with the CFC.** The PSPRC will coordinate with the CFC to identify legislation that is likely to have a substantial impact on the ADP of Washington correctional facilities.<sup>27</sup>
- **Feasibility.** Availability of data may limit the feasibility of producing an REIS for certain legislative acts. Initially, the PSPRC will focus on policies that can be easily examined using existing data.

Once a policy of interest is identified by the SGC, the PSPRC will produce an REIS. To the extent possible, the PSPRC hopes to complete REISs prior to the public hearing; it is important to note that in some instances, time constraints may not allow for such quick turnaround and statements may still be submitted as legislation proceeds through the legislative process.

The PSPRC will submit and present relevant REISs to the SGC for their review and consideration during one of their special sessions. The SGC will then elect to submit a copy of the REIS to relevant legislative committees as a part of their written testimony and include the REIS on their website. The PSPRC will also include the REIS on their website for public access.

Copies will also be submitted directly to appropriate committee staff. Submitted statements will be posted on the PSPRC website for public access. Once submitted, REISs may be updated if amendments are passed that substantially alter the population affected by the original version of the legislation. Updates will only take place once an amendment is formally adopted. At this time, the PSPRC will not be planning to submit a budget request to support this work, and the PSPRC will only perform this role within current capacity. In the future, if new assignments or competing priorities emerge, with the support of the SGC, we will be submitting a budget request so we would not cease performing this role.

## Data

The PSPRC houses the Washington State Justice Data Warehouse (JDW). The JDW includes data from the Washington Association of Sheriffs and Police Chiefs (WASPC), the AOC, the CFC, and the DOC. The

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<sup>26</sup> Should the SGC identify a larger number of policies that they would like an REIS for, PSPRC staff will work with the SGC members to prioritize legislation considering the likelihood that the bill will receive a hearing in the original policy committee and subsequent movement through the legislative process. Additionally, PSPRC will encourage SGC to prioritize legislation for which data are available to conduct reasonable analyses for an REIS.

<sup>27</sup> The CFC conducts analyses on ADP that is used by the DOC to complete their required fiscal notes.

PSPRC also has access to the Washington State Institute for Public Policy (WSIPP)'s Criminal History Database (CHD).

Initially, the PSPRC will collaborate with the CFC to identify populations likely affected by a legislative proposal. Using CFC's judgement and sentencing (J&S) database, the CFC will identify populations likely affected by legislation that includes reforms to felony sentencing. These data are used to provide estimated impact on the correctional population to complete legislative fiscal notes. To ensure that the REIS and fiscal notes reflect similar assumptions, the PSPRC will obtain initial population information from the CFC, when possible.

In instances where the CFC is unable to identify the population likely to be affected, the PSPRC will use the JDW, CHD, and J&S databases to identify the population for an REIS.<sup>28</sup> Due to the complexity associated with sharing data between agencies, the PSPRC is unlikely to be able to collect additional data from state agencies to complete an REIS.<sup>29</sup> However, if the PSPRC determines that additional data would be useful for completing REISs in the future, they may seek additional data sharing agreements to incorporate new data sources into the JDW.

## Methods

Disproportionality and disparity may be examined in multiple ways. The methods for examining disproportionality will vary based on the specific actions of a legislative proposal. To the extent possible, the PSPRC will seek to determine whether disproportionality is likely to result from a policy change and, if so, the magnitude of the impact on different racial and ethnic groups. This section briefly describes some of the primary approaches that the PSPRC anticipates using in the production of REISs.

### Figure 6. Primary Measure of Disproportionality

Disproportionate Changes in the Overall Population.	<b>How does the policy change affect the proportion of individuals in a particular part of the system?</b>
	<i>For example, does the policy result in a greater overall portion of the prison population who are Black? This measure compares representation of different racial groups before and after a policy change.</i>
Disproportionate Changes within a Specific Racial Group.	<b>Will the proportion of individuals within a group who experience an event change after the policy change?</b>
	<i>For example, does the proportion of Black defendants who receive an incarceration sentence increase due to the policy change? This measure compares the effects of a policy change within each racial group.</i>

<sup>28</sup> Use of additional datasets will depend on approval from the original data owners. The PSPRC will work with data owners to ensure that the use of data in the JDW for REIS purposes is compliant with data-sharing agreements.

<sup>29</sup> Most criminal justice records are confidential and require complex data-sharing agreements (DSAs) and authorizations to share and/or use the data for a particular project. The administrative procedures necessary to gain authorization to data can take upwards of six months to complete. These regulations make it unfeasible to obtain new data for REISs during the legislative session where statements must be produced within just a few days. There may be exceptions in which state agencies are able to provide aggregate-level data (e.g., population size and percentages by race) that would not require a DSA but could still be useful in identifying potential racial disproportionality.



Policy changes may affect one or both of the primary measures of disproportionality and the effects on each measure may vary. **For example**, a policy change may increase the percentage of black defendants receiving a prison sentence. However, if the policy change results in an equal percentage increase in white defendants receiving a prison sentence, there may be no change in the disproportionate representation of each group in the overall population.

In addition, policy changes in one area of the system may have disproportionate impacts on multiple other areas of the system. For example, changes in police policies may impact the proportionate representation of groups in the overall population who are charged, the overall population who is convicted, and the overall population who are incarcerated in state prisons. Initially, the PSPRC's primary focus will be on the immediate effects of a policy change (e.g., for a change in sentencing laws, the PSPRC will examine changes in sentencing outcomes).

### Secondary measures

The PSPRC may produce additional measures as needed to best examine racial and ethnic impacts. For example, the CFC uses an "Adult Sentencing Disproportionality Ratio Calculation" which represents the percentage of a racial group involved in sentencing compared to the percentage of that racial group in the Washington state general population.<sup>30</sup> This measure indicates whether a particular racial group is overrepresented at sentencing compared to their representation in the general population.

General population rate ratios, like those used by CFC, are typically less effective for examining potential racial and ethnic impacts of policy changes. General population rate ratios may capture disproportionality that is the result of other aspects of the criminal justice system and not the policy change in question. Similarly, general population rate ratios may mask disproportionality at a particular part of the criminal justice system.

The PSPRC will focus on specific population rate ratios at different stages of the criminal justice system (primarily at sentencing), but general population rate ratios may be provided for additional context if they are useful for examining impacts of a policy proposal.<sup>31</sup>

In some cases, policy changes may have other measures of disproportionality that may be effective in examining racial and ethnic impacts. For example, policies related to risk assessments may include an examination of accuracy equity, statistical parity, error rate balance, predictive parity, and/or treatment equality.<sup>32</sup> The PSPRC will review current literature to determine if secondary measures should be incorporated on a case-by-case basis.

### Assumptions and Limitations

Discretion is a key component of the criminal justice system. For example, police officers have discretion over whether or not to make an arrest. Prosecutors have discretion as to whether to file charges, the types of charges to file, and the types of convictions to pursue through plea bargaining. Judges have

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<sup>30</sup> Caseload Forecast Council, (December 2023). *Adult General Disproportionality Report, Fiscal Year 2023*. Report to the Legislature, ESSB 6032, Section 126(3), Passed by the 2018 Legislature. State of Washington: Caseload Forecast Council. Olympia, WA.

<sup>31</sup> For example, an REIS examining a policy that changes aspects of the sentencing system may examine the percentage of a racial group sentenced to incarceration compared to the percentage of that racial group convicted of an incarceration-eligible offense.

<sup>32</sup> Knoth, L. & Hirsch, M. (2021). *Washington Offender Needs Evaluation: Review and examination of reassessments* (Document Number 21-12-1902). Olympia: Washington State Institute for Public Policy.



discretion to issue sentences following a conviction. The Indeterminate Sentencing Review Board (ISRB) has discretion over whether certain incarcerated individuals should be released from prison.

Predicting the likely impacts of criminal justice reform is difficult because of the wide discretion afforded to stakeholders in the system. For example, if the Legislature establishes a new sentencing enhancement, prosecutors may not always choose to pursue the enhancement when it is applicable. Furthermore, if the sentencing enhancement gives judge's discretion to increase an incarceration sentence up to a certain amount, it is unknown how judges will likely use the discretion and if they would invoke the full amount of additional time or if they would opt to increase incarceration sentences only partially.

REISs are likely to include a degree of uncertainty, particularly when it comes to isolate the magnitude of disproportionality that is likely to result from a policy. The PSPRC will clearly articulate any assumptions used to assess racial and ethnic impacts and any limitations or uncertainties associated with the final analyses in each impact statement. Additionally, the PSPRC will include discussion of any assumptions or limitations resulting from incomplete or unavailable data.

## Limitations

In its current state, criminal justice data in Washington State is fragmented between various different agencies. Each agency has its own methods of data collection and reporting. As a result, there are often inconsistencies in how information is recorded throughout the criminal justice system. These inconsistencies are particularly problematic for assessing characteristics such as race and ethnicity.

In some instances, the PSPRC may be able to use a combination of data sources to increase reliability of race and ethnicity characteristics (e.g., combining AOC court records with CFC sentencing records). In other instances, the PSPRC will rely on the information provided in a single source and any limitations associated with that respective data source. Continued integration of data sources (see the "Future Research" section) will improve the reliability of and consistency in race and ethnicity coding over time.

## Future Research

The PSPRC's production of REISs will be limited and dependent on the workload capacity and availability of data. The PSPRC will continue to review its approach and consider additional developments that could increase the efficiency in producing REISs, hopefully increasing the number of statements that may be produced in a legislative session.

### Creating an REIS Forecasting Model

As the PSPRC continues to build the justice data warehouse (JDW) at OFM, new opportunities may develop to further advance the development of REIS for criminal justice. For instance, as the JDW integrates additional data, the PSPRC could develop a system-based disproportionality forecast model such that we could estimate the downstream and cumulative, system-wide impacts of policy changes in a particular part of the criminal justice system. For example, rather than solely examining the disproportionate impacts of a change in police practices on arrest outcomes, a comprehensive model could examine how the change in police practices also impact subsequent disproportionality in convictions and incarceration.<sup>33</sup> In addition, integrated data would reduce the amount of time it takes to complete analyses, allowing the PSPRC to produce more statements with the same workload requirements.

### Expanding Beyond Race and Ethnicity

Other states have expanded their impact statements beyond racial and ethnic groups. *For example*, Iowa includes women and people with disabilities as groups to be assessed for potential disproportionate impacts. In addition to known disparity by race, research has historically identified disparities associated with other demographic characteristics such as sex, age, and citizenship.<sup>34</sup>

Policy reforms may also have unique impacts for combinations of different demographic characteristics such as by sex and race (e.g., Black men, white men, Black women, and white women). Initially, the PSPRC will focus its analyses on race and ethnicity due to limited capacity to complete impact statements. If/when Washington State impact statements are expanded to include additional demographic groups, it will also be important to consider intersectional impacts based on combinations of different characteristics, when possible.<sup>35</sup>

While criminal justice reforms may impact the experience of those who are convicted of an offense, they may also uniquely impact the experiences of crime victims. Thus, policy makers may also want to consider whether or how a policy could impact different victim populations. Unfortunately, administrative data reporting victim characteristics is very limited. Analyses of victims would likely require substantial reforms in data collection procedures.

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<sup>33</sup> Mauer, 2007.

<sup>34</sup> Steffensmeier and/or Ulmer papers here.

<sup>35</sup> Often times researchers are limited by the

## Post Implementation Racial and Ethnic Impact Analysis

REISs use existing data to isolate the potential disproportionate impact of a particular policy change on different racial and ethnic groups. Predictions about the potential impact of different criminal justice reforms carry a significant level of uncertainty. Prior research on criminal justice policy change has identified the potential for significant changes in the practical reality of policy change once theoretical actions are imposed within the context of complex, varying organizations.<sup>36</sup> Even the most well-intended policy change may result in unintended consequences when local and state organizations take the steps to implement change on-the-ground.

Post implementation research is necessary to ensure that legislative acts are a) meeting their intended goals and b) are not resulting in unintended consequences. Seemingly race-neutral policies may still manifest disparate impacts for Washingtonians once implemented. As such, lawmakers could also consider follow-up investments in post-implementation racial impact analyses (e.g., 3-5 years after implementation) for legislation that significantly changes policies related to criminal sentencing.

## Conclusion

Starting in the 2025 legislative session, Washington will join other states in the production of racial and ethnic impact statements for legislation related to criminal justice. Within the limits of PSPRC's capacity and resources, these statements will provide the Washington State Legislature with additional information for some policy proposals, allowing for an intentional consideration of how proposed changes may differentially impact communities across the state. REISs may be able to anticipate and thus avoid unintended consequences, avoiding harm for Washingtonians and eliminating the need for costly policy reversals in the future.

The production of REISs in Washington is likely to evolve over time. As additional data and resources become available, the PSPRC may be able to expand the production of REISs to include additional legislative proposals and to consider differential impacts for populations based on additional demographic characteristics. This report represents the first step in integrating proactive consideration of racial impacts in Washington's criminal justice reforms, aligning the state with nationally recognized best practices and similar processes currently implemented in other jurisdictions.

**Suggested Citation:** Knoth-Peterson, L. (2024). *Criminal Justice Racial and Ethnic Impact Statements*. Office of Financial Management; Public Safety Policy and Research Center. Olympia, WA.

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<sup>36</sup> Ulmer, J. T., & Kramer, J. H. (1996). Court communities under sentencing guidelines: Dilemmas of formal rationality and sentencing disparity. *Criminology*, 34(3), 383-408.

## Appendix A: Characteristics of Formal Racial and Ethnic Impact Statement Processes in the United States

State	Year Start	Trigger Language	Number per Year	Population Groups Assessed for Disproportionality	Required Information or Data	Data Source
Iowa	2008	Required for any bill/resolution/amendment that changes existing penalties or introduces new penalties or which changes procedures for parole, sentencing, or probation.	Unlimited	Women, people with disabilities, African Americans, Latinos, Asians or Pacific Islanders, American Indians, and Alaskan Native Americans.	None statutorily prescribed	Justice Data Warehouse - combines court and DOC data.
Connecticut	2008	Upon request for criminal justice bills or amendments that may change the population confined in correctional facilities either pre-trial or after sentencing. Requests must be made within a particular timeframe.	Unlimited	Racial and ethnic subpopulations not statutorily defined.	Statement must indicate whether the bill will have disparate impact on the racial/ethnic composition of correctional facility population and an explanation of why or why not or an indication that conclusions could not be drawn within the limited time for drafting a statement.	Obtained on an ad-hoc basis through consultation with state agencies.
Oregon	2013	Request based structure. Requests allowed for legislation impacting recipients of human services and/or criminal justice populations. Requests must be signed by one member from each major political party.	Unlimited	"Criminal offender population" and "recipients of human services," including court-involved youth and youth in child welfare. No defined race/ethnicity.	An estimate of how the proposed legislation would change the racial and ethnic composition of the criminal offender population or recipients of human services; A statement of the methodologies and assumptions used in preparing the estimate; and If the racial and ethnic impact statement addresses the effect of the proposed legislation on the criminal offender population, an estimate of the racial and ethnic composition of the crime victims who may be affected by the proposed legislation.	Criminal Justice Commission, which houses the SAC
New Jersey	2018	Criminal justice bills and regulations affecting sentencing. Required for any bill/resolution/amendment that may result in an increase or decrease in adult and/or juvenile	Unlimited	Adults and juveniles involved with the criminal legal system.	A statistical analysis of how the change in policy would affect racial and ethnic minorities; the impact of the change in policy on correctional facilities and services for racial and ethnic minorities; the estimated number of	State agencies must make data available to Office of Legislative Services for purposes of preparing REIS.

		pretrial detention, sentencing, probation, or parole populations.			criminal and juvenile justice matters involving racial and ethnic minorities adjudicated each year; and the anticipated effect of the change in policy on public safety in racial and ethnic communities in the State and for victims and potential victims in those communities. Must also include the rationale, if any, for the policies impact on racial and ethnic groups.	
Colorado	2019	Produced upon request by the speaker of the house of representatives, president of the senate, or minority leaders of the house of representatives or the senate. Subject areas eligible for a request include bills related to economics, employment, health, education, & public safety outcomes.	5 requests per year each for the speaker of the House of Representatives, President of the Senate, and minority leaders of the House of Representatives and the Senate.	Subpopulations identified based on socioeconomic status, race, ethnicity, sex, gender identify, sexual orientation, disability, and/or geography.	None prescribed	State departments/ agencies/ institutions must provide information/data necessary to draft impact statements.
Illinois	2021	Request-based structure. May be requested by any member of the legislature.	Unlimited	Racial and ethnic subpopulations not statutorily defined.	Statements must include an estimate of how the proposed legislation would impact racial and ethnic minorities; a statement of the methodologies and assumptions used in created the estimate; an estimate of the racial and ethnic composition of the populations who may be affected by the legislation; and any other matter that a responding agency considers appropriate in relation to the racial and ethnic subgroups likely to be affected by the bill.	Varying state agencies responsible for producing data based on what topic area the bill falls under. For criminal justice bills, statements are prepared by the Illinois Criminal Justice Information Authority
Maine	2021	Requests based on vote by joint standing committee and approved by Presiding Officers.	Unlimited	Historically disadvantaged racial populations		Data available to the state agency (department, agency, office, board or commission, or a quasi-independent agency, board, commission, authority or institution that is directed to prepare

						the REIS in the initial request.
Virginia	2021	At the request of the Chair of the House Committee for Courts or Justice or the Chair of the Senate Committee on the Judiciary for criminal justice bills.	3 per session for each of the 2 eligible requestors	Racial and ethnic subpopulations not statutorily defined.	Not specified	State agency data provided on an ad-hoc basis at the request of the Joint Legislative Audit & Review Commission (JLARC)