Racial and Ethnic Impact Statements

What is a Racial and Ethnic Impact Statement?
A Racial and Ethnic Impact Statement (REIS) requires policymakers proposing new legislation or changes to existing legislation to assess the potential impact on racial disparities. Such statements are similar to fiscal or environmental impact statements, which are routinely required before new programs or developments can be implemented and are now widely considered responsible mechanisms of government.¹

A REIS can be applied to any proposed policy changes (e.g., a bill, joint resolution or amendment) that would create a criminal offense, significantly change an existing public offense or the penalty for an existing offense, or change sentencing, parole or probation procedures. It is often linked to a proposal that could have an impact on the population of people incarcerated in a given jurisdiction. These statements can also shed light on proposed civil and administrative policies that intersect with the criminal justice system and carry punitive sanctions – such as loss of parental rights, driver’s licenses or wage garnishment.²

Why Are Racial and Ethnic Impact Statements Needed?
The drug war has produced profoundly unequal outcomes across racial groups, despite policies that are race neutral on their face. Higher stop, search, arrest, conviction and sentencing rates for Black and Latino Americans are not reflective of increased prevalence of drug use or sales in these communities.³ These disparities also involve historical customs and practices in law enforcement and the criminal justice system that exacerbate structural inequities by focusing on urban areas, lower-income communities, and communities of color.⁴ Racial and Ethnic Impact Statements can help assess disparities at various stages of the criminal justice process to reveal discriminatory outcomes, whether purposeful or not.⁵

The Anti-Drug Abuse Act of 1986 (ADAA) is a prime example of legislation that needed a REIS analysis prior to enactment.⁶ This legislation reinstalled mandatory minimums for drug offenses and ushered in the disastrous 100-to-1 sentencing disparity between crack cocaine and powder cocaine.⁷

Many states adopted similar mandatory minimum sentencing laws, which have contributed greatly to the number of people of color behind bars.⁸ A 2013 study found prosecutors are twice as likely to pursue mandatory minimums for Black people as for White people, who comprise the majority of crack cocaine users.⁹ Among people who received a mandatory minimum sentence in 2011, 38 percent were Latino and 31 percent were Black.¹⁰ In large part due to the crack/powder sentencing disparity and selective enforcement of crack laws, Black people now comprise 40 percent of those incarcerated for drug law violations despite comprising only 13 percent of the population.¹¹

Back in 1986, many criminal justice experts testified – to no avail – about the disparities that would result from the ADAA.¹² A mandated REIS for the ADAA would have provided an empirical tool for decisionmakers to assess the likely racial injustices stemming from its passage.¹³

A REIS can draw attention to these kinds of disparities, force lawmakers to confront the mechanisms within the current system that lead to the over-incarceration of Black and Latino Americans, and require them to consider alternative approaches.¹⁴ Ideally, such statements can help policymakers avoid enacting policies that create or contribute to racial disparities – and perhaps even correct some of the mistakes of the past.¹⁵
After nearly 30 years, Congress finally passed legislation that lowered the crack/powder sentencing disparity in 2010, and the U.S. Sentencing Commission amended federal sentencing guidelines and provided retroactive relief for those sentenced under the old federal drug sentencing guidelines. If a REIS had been required prior to passage of the ADAA, and throughout its early years of implementation, there would have been more evidence to help fix it sooner.

How Does a REIS Work?
A REIS is generally understood as a factual, unbiased tool to inform the legislature as they decide whether or not a particular bill should be enacted. If significant racial disparities can be predicted before a bill is passed, policymakers can consider alternatives.

Existing laws regarding REIS vary, but all include a focus on the racial composition and projected racial composition of the “offender” population. For instance, the most effective statements include information such as:

- the estimated number of criminal cases per year that the legislation will impact, broken down by race;
- the fiscal impact of incarcerating people pursuant to the legislation;
- the impact of the legislation on minority communities;
- the immediate and long-term impact of the legislation upon existing correctional institutions, community-based correctional facilities and services and jails; and
- the likelihood that the legislation may create a need for additional prison capacity.

What States Have REIS?
States across the country are beginning to address racial disparities in the criminal justice system. In 2007, Minnesota’s Sentencing Guidelines Commission began voluntarily preparing statements to address the racial disparities in state prisons. In 2008, Iowa became the first state to pass legislation mandating racial impact statements. In Iowa, statements are prepared by the Legislative Services Agency in cooperation with other state agencies. Connecticut passed a bill requiring a REIS in 2009 for any bill that could potentially affect the population of state correctional facilities. It can be requested by legislative committee members analyzing such a bill.

In 2013, Oregon passed a bill that enables the legislature to evaluate whether a bill or human service program is likely to lead to increased racial disparities. Under the law, any two legislators, as long as they are from different parties, can ask the Oregon Criminal Justice Commission to evaluate proposed legislation or ballot measures and issue a statement on the expected impact on racial disparities. Additionally, state agencies in Oregon awarding grants for juvenile court or child welfare services must require applicants to include racial impact statements as part of their applications.

Another approach is to establish a task force or commission to study existing patterns of racial disparities, as well as practices of racial profiling in law enforcement and court systems. For example, in Wisconsin, the Commission on Reducing Racial Disparities collected data and offered a series of recommendations. Many states conduct similar assessments for evaluating minority youth involvement in the juvenile justice system, and they could be extended to the adult population.

Additional Reading on Racial and Ethnic Impact Statements


5 Erickson, "Racial Impact Statements: Considering the Consequences of Racial Disproportionality in the Criminal Justice System."


14 Erickson, "Racial Impact Statements: Considering the Consequences of Racial Disproportionality in the Criminal Justice System."


21 Mauer, "Racial Impact Statements-Changing Policies to Address Disparities; Erickson, "Racial Impact Statements: Considering the Consequences of Racial Disproportionality in the Criminal Justice System."


23 IOWA CODE ANN. § 2.56(1).

24 CONN. GEN. STAT. ANN. § 2.24b.


Drug Policy Alliance | 131 West 33rd Street, 15th Floor, New York, NY 10001
nyc@drugpolicy.org | 212.613.8020 voice | 212.613.8021 fax