

Racial and Ethnic Impact Statements:

An Overview for the Oregon State Legislature

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Overview of Racial and Ethnic Impact Statements

- What is Oregon doing now?
- What are other states doing now?
- Elements for consideration
- Role of nonpartisan legislative agencies
- Questions to answer

Oregon's Racial and Ethnic Impact Statements

2009: Senate Bill 630 and Executive Order 09-02 established Child Welfare Equity Task Force

- Department of Human Services prepared REI using Child Welfare data

2017: HB 2238 eliminated the sunset for the REI process and expanded officially to Department of Human Services as the entity to prepare human services-related REIs

2013: Senate Bill 463 required the Criminal Justice Commission to prepare REI on proposed legislation or state measures.

- REIs to describe impact and racial and ethnic composition of criminal offender population or recipients of human services
- Focused on criminal justice policies through the judiciary committees
- Required upon written request from at least one legislative member from each political party
- Also required grants awarded to corporations or other legal entities to include and REI. Sunset Jan 2018.

Measure 110

Racial & Ethnic Impact Statement

The Oregon Criminal Justice Commission (CJC) received a written request from a member of the Legislative Assembly from each major political party requesting a racial and ethnic impact statement pursuant to ORS 137.885 for a state measure that is related to crime and likely to have an effect on the criminal justice system.

Criminal Justice System Changes Examined by Race/Ethnicity

The initiative changes several criminal sentencing laws regulating the possession of controlled substances (PCS). Relevant to the creation of the data estimates reported below, Measure 110 would change PCS convictions to criminal violations, except where an individual possesses a substantial quantity of drugs, which would be a misdemeanor, or is convicted of a commercial drug offense, which would be a felony.

A conviction for simple possession of controlled substances results in either probation or a short term sentence in a local jail in Oregon. The CJC examined the type of sentence individuals received for PCS in 2019 (probation versus jail) as well as sentence lengths by race/ethnicity and found few differences. The primary source of racial/ethnic disparities is in the rate at which individuals of different races/ethnicities were convicted of PCS. Currently, Black and Native American Oregonians are overrepresented compared to their Census populations.

Race/Ethnicity	Convictions in 2019 for PCS			Pct.
	Misd.	Felony	Total	
Asian	16	19	35	0.9%
Black	120	69	189	4.7%
Hispanic	238	198	436	10.7%
Native American	27	25	52	1.3%
Unknown	5	4	9	0.2%
White	1,733	1,603	3,336	82.2%
Total	2,139	1,918	4,057	100.0%

CJC estimates that if Measure 110 were to pass, a substantial reduction in the number of felony and misdemeanor convictions for PCS would follow. The total number of convictions for PCS would fall from 4,057 to 378, a nearly 91% reduction. This reduction would also be substantial for all racial groups, ranging from 82.9% for Asian Oregonians to approximately 94% for Native American and Black Oregonians. This means that approximately 1,800 fewer Oregonians per year are estimated to be convicted of felony PCS and nearly 1,900 fewer convicted of misdemeanor PCS. Prior academic research suggests this drop in convictions will result in fewer collateral consequences stemming from criminal justice system involvement, which include difficulties in finding employment, loss of access to student loans for education, difficulties in obtaining housing, restrictions on professional licensing, and others.

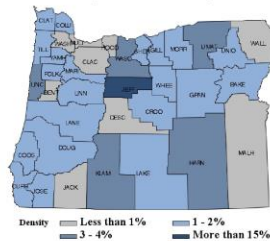
Estimated Convictions for PCS if Measure 110 were to Pass

Race/Ethnicity	Misd.	Felony	Total	% Chg
Asian	5	1	6	-82.9%
Black	9	3	12	-93.7%
Hispanic	40	19	59	-86.5%
Native American	1	2	3	-94.2%
Unknown	2	0	2	-77.8%
White	219	77	296	-91.1%
Total	276	102	378	-90.7%

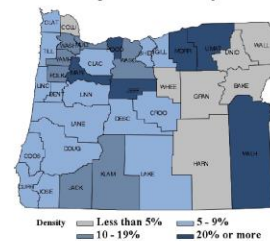
The changes proposed by Measure 110 would also lead to a reduction in racial disparities for PCS convictions at both the misdemeanor and felony levels. Using a disparity metric called the Raw Differential Representation (RDR), CJC estimates that racial disparities for misdemeanor and felony PCS convictions will be narrowed substantially if Measure 110 passes.

The CJC also estimates that arrests for PCS would fall substantially. Using the estimated reduction in convictions as a guide, CJC estimates that PCS arrests would fall from 6,726 to 615. Currently, Black Oregonians are substantially overrepresented in PCS arrests compared to white Oregonians. Should Measure 110 pass, it is estimated that this disparity would fall by nearly 95% according to the RDR.

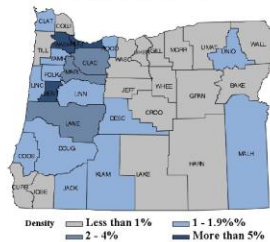
Native American/Alaska Native Population Density



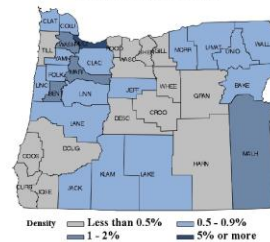
Hispanic Population Density



Asian/Pacific Islander Population Density



African American Population Density



Note: Due to differences in the relative size of racial and ethnic minorities, the scales on each map are different. Take care when making comparisons across racial/ethnic categories.

Arrest Rates

The first point of contact with the criminal justice system where race and ethnicity data is available is at arrest. Arrest data by race and ethnicity is available from the Oregon Uniform Crime Reports (OUCR) Program, which is a division within Oregon State Police. Section 6 of the Annual Crime Report provides arrest data by race and crime type². The Criminal Justice Commission (CJC) has compiled this data from 1986 to 2012, and calculated arrest rates for each crime type by race. The OUCR Program was temporarily closed in 2003 due to budget issues, and the data from 2003 and 2004 is highly skewed. Those years have been removed from the graphs below.

The graph below shows arrest rates by race for person crimes. The OUCR program defines person crimes as willful murder, negligent homicide, forcible rape, other sex crime, kidnapping, robbery, aggravated assault, and simple assault. In 1986

² http://www.oregon.gov/OSP/CJIS/pages/annual_reports.aspx



Racial and Ethnic Impact Statement Historical Data

Criminal Justice Commission

Senate Bill 463 (2013) requires the Oregon Criminal Justice Commission to prepare a racial and ethnic impact statement that describes the effects of proposed legislation on the racial and ethnic composition of the criminal offender population or recipients of human services. To obtain a racial and ethnic impact statement, one member of the Legislative Assembly from each major political party must sign a written request. Oregon, along with all states in the nation, has an overrepresentation of minority groups in the criminal justice system. This report highlights Oregon specific data that displays this overrepresentation. This report does not attempt to explain why racial and ethnic disparity exists in the Oregon criminal justice system, but simply displays the extent of the disparity at different points within the system. Racial and ethnic impacts on decisions made in the criminal justice system are highly correlated with other factors such as geography, income, education, employment, health care, and a myriad of other factors; see appendix for details.

Oregon is less diverse than the nation as a whole, but minority groups in Oregon are growing at a faster pace than nationwide.¹ As of July 2013 Oregon's population was just above 3.9 million and the largest minority group in Oregon is the Hispanic population at 12.3% of all Oregonians. The next largest minority group in Oregon is the Asian/Pacific Islander population at 4.0% of the total population. African Americans comprise 1.8% of Oregon's total population. The majority of African Americans in the state reside in Multnomah County, with 60% of this minority group's population. Washington County contains nearly 15% of the state's African American population, with the remainder residing in the rest of the state. Native American/Alaska Natives make up 1.1% of Oregon's population. This group is concentrated in urban areas, as well as more sparsely populated rural counties that contain existing or planned Indian reservations. Female Oregonians comprised 50.6% of the total population as of July 2013.

¹ http://www.oregon.gov/DAS/OEA/docs/demographic/OR_pop_trend2012.pdf

State (when passed)	Iowa (2008)	Maine (2021 - pilot)	Colorado (2019)
Product title	Minority Impact Statement/Correctional Impact Statement	Racial Impact Statement	Demographic Note
Internal/external product	Internal – Fiscal Services Division of (nonpartisan) Legislative Services Agency	External – University of Maine & Permanent Commission on the Status of Racial, Indigenous, and Maine Tribal Populations	Internal – economist within (nonpartisan) Legislative Council office
Tied to bill passage/leg process	Yes – prior to floor debate; completed within "reasonable time" from request or determination that statement is needed	Not currently, but hoping to evolve into this	No – completed within 2 weeks of request
Which topics	Criminal justice/corrections policy	For pilot, bills in 4 committees: Education and Cultural Affairs; Health and Human Services; Judiciary; Labor and Housing	Any – so far: education funding, health benefits, taxes, transportation, mobile devices and driving
Which bills/how triggered	Bills that create a public offense, change a current offense, or change existing correctional procedures <ul style="list-style-type: none"> • May be determined by LSA or requested by member 	Selected 7 "carryover" bills for pilot in 2022 <ul style="list-style-type: none"> • Bills proposed by workgroup of legislative agency staff, UMaine, and Commission, and approved by legislative subcommittee 12/10/21 	Up to 5 requests per leadership (caucus) office
Substantive findings/conclusions	Required to determine the potential correctional impact on minorities of proposed legislation	Yes – plan to provide analysis of the problem, solution, impact on historically marginalized populations, and offer mitigation options	Yes – including nuanced assessment of impacts and data limitations
Quantitative/Qualitative data	Primarily quantitative	Both: quantitative by UMaine, qualitative by Commission	Primarily quantitative, incorporates public comments as qualitative

State (when passed)	Connecticut (2018)	New Jersey (2016)	Oregon (2013)
Product title	Racial and Ethnic Impact Statement	Racial and Ethnic Impact Statement	Racial and Ethnic Impact Statement
Internal/external product	Internal – Office of Legislative Research and Office of Fiscal Analysis	Internal – Office of Legislative Services	External – Criminal Justice Commission or Department of Human Services
Tied to bill passage/leg process	Yes - During regular session: <ul style="list-style-type: none"> within 10 days after the originating committee’s reporting deadline, for favorably reported bills, and at least 10 days before adjournment, for amendments 	After bill is voted out of committee, for bill or ballot measure	Not required for bill or ballot measure passage, but produced upon request to accompany bill/ballot measure materials
Which topics	Criminal justice/corrections policy	Criminal justice policy	Criminal Justice or Human Services policies
Which bills/how triggered	<ul style="list-style-type: none"> Bills and amendments that could potentially change correctional facilities' pretrial or sentenced populations At the request of any legislator 	<ul style="list-style-type: none"> For bills and state ballot measures Upon request by legislators 	<ul style="list-style-type: none"> For bills and state ballot measures Requested by at least 1 member of each political party
Substantive findings/conclusions	Must indicate: <ul style="list-style-type: none"> whether & why the bill would have a disparate impact on correctional facilities' racial and ethnic composition; that it cannot be determined whether there would be such a disparate impact; or that there is insufficient time to determine whether there would be such a disparate impact 	Shall include: <ul style="list-style-type: none"> assessment of the potential impact of the proposed legislation on racial and ethnic minorities, including disproportionate impact and rationale 	Yes – including nuanced assessment of impacts and data limitations
Quantitative/Qualitative data	Primarily quantitative	Primarily quantitative, requires statistical analysis of how proposed change would affect racial and ethnic minorities, including correctional facilities and services, the number of juvenile justice matters adjudicated, and effect on public safety and potential victims	Primarily quantitative

Other states
have
considered
proposals...

- Arkansas
- Florida
- Illinois
- Kentucky
- Maryland
- Minnesota
- Mississippi
- New York
- Oklahoma
- Texas
- Vermont
- Virginia
- Wisconsin

Racial & Ethnic Impact Statements for the Oregon Legislature

Elements for Consideration

Internal/Legislative Branch Product

- Would require new FTE with different skills/training
- Economist, demographer, public policy researcher, other social scientist
- Expertise in inequality, social stratification, data/research methods
- Alternatives:
 - Contract with academic researchers/external partners
 - Possible use of nonpartisan staff as a bridge

Preserves nonpartisanship/trusted product

- Data-driven
- Care in crafting answerable, standard questions
- Review of prototypes before rollout
- Iterative process incorporating feedback on product, especially findings/conclusions
- An alternative: broaden to demographic report
 - Incorporates intersectionality
 - Perceived as less partisan/broader appeal
 - Researcher to identify relevant data, demographic elements

Tied to bill passage/legislative process

- To ensure enough time for a substantive report, set a reasonable deadline (2 weeks+)
- To ensure not duplicating efforts, request report on no more than 1 version of bill per chamber
- If requiring report for every bill's passage, this may delay the process; but it's hard to make this a requirement if only by request

Racial & Ethnic Impact Statements for the Oregon Legislature

Elements for Consideration, continued

Broad topics (beyond criminal justice, human services)

- Requests for bills that overtly impact race/ethnicity
- Requests on less obvious topics that impact race/ethnicity, including systematic issues
- Could request on specific bills, identify a "trigger," or for all bills

Substantive findings/conclusions

- Want findings/conclusions to be meaty
- Tradeoff: time to make comprehensive
- Tradeoff: nonpartisan staff
- Alternative is to have an outside entity (not nonpartisan legislative staff) prepare meaty conclusions

Applied to broad cross-section of bills (across committees, chambers)

- If every bill is covered, may require a large team of staff
- To know how to staff appropriately, an alternative is "by request" or bill limits

Includes quantitative and qualitative analysis

- An option: opportunity for public comment on draft/preliminary report for qualitative feedback
- Where no/insufficient data exist, this may be its own finding and may influence a bill to require agencies to collect data for the future

Role of Nonpartisan Legislative Agencies

- Iowa, Colorado, Connecticut, New Jersey all have nonpartisan legislative agencies producing impact statements
- Strategies to maintain nonpartisanship and trust in products:
 - Data-driven
 - Care in crafting answerable, standard questions
 - Review of prototypes before rollout
 - Iterative process incorporating feedback on product, especially findings/conclusions

Questions to Answer

Who will produce the statement?

- If legislative staff, how do we support their nonpartisanship?

Will this be tied to the legislative process?

- If so, how do we provide time for a thorough product without delaying the process?

Which bills will get a statement?

- By request?
- By a trigger/objective criteria?

Thank you!

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