

# **REPORT TO THE LEGISLATURE**

## **Racial and Ethnic Impact Statements**

2ESHB 2376 Section 125(2) passed by 2016 Legislature

December 27, 2016

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## Executive Summary

The Legislature directed the Caseload Forecast Council (CFC) to report to the Governor and the Legislature by December 31, 2016, on recommendations for procedures and tools for providing cost-effective racial and ethnic impact statements (REISs) for those forecasts produced by the CFC in the areas of criminal justice, human services, and education. While there is no universal definition of REISs, they are generally considered to be a tool for policymakers to assess potential disproportionate racial and ethnic impacts when considering legislation or other proposals. At least three states that have either proposed or implemented REISs utilized the exact same language in their respective bills: that they must be impartial, simple, understandable, and include estimates based on available data.<sup>1</sup>

This report relies on research from both proposed and enacted REIS-related legislation across the states, as well as two surveys created by CFC staff: (1) a Data Inventory<sup>2</sup> sent to each of the CFC's ten forecast technical workgroups and (2) a REIS Questionnaire<sup>3</sup> sent to each of the entities listed on the budget proviso. That research yielded the following findings:

1. Internal Versus External Production of REISs - Most of the agencies responsible for the caseloads that the CFC forecasts would prefer have REISs produced internally rather than by an external organization. Program-specific staff expertise was emphasized in all of the responses.
2. Subject Areas for REIS Production (Criminal Justice, Human Services, Education) - Experience of other states indicates that the criminal justice arena is the most ripe for piloting REISs in Washington State. Organizations that work directly with criminal justice data indicated that it would be feasible to produce REISs with the least amount of resources and with the quickest turn-around relative to the areas of human services and education.
3. Triggering a REIS Request - Placing specific parameters for requesting REISs could help to improve the likelihood of quality products and lower the impact on constrained agency resources.
4. Cost-effectiveness, Timeliness, and Format - A simpler high level data-driven REIS format would allow a quicker turnaround for use when bills are proposed during legislative session. A more in-depth REIS involving both quantitative and qualitative impacts on communities could take weeks or months, depending on how many REISs are requested and whether full-time resources are provided for the REIS analysis and reporting process.

Based on these findings, the CFC recommends an incremental approach to the production of REISs starting with a criminal justice pilot project before expanding REISs to other program areas.

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<sup>1</sup> See Appendix A for examples of the variations in definition both within Washington State and nationwide.

<sup>2</sup> See Appendix B for the Data Inventory.

<sup>3</sup> See Appendix C for the REIS Questionnaire.

## Introduction

During the 2016 Legislative session, the Legislature directed the Caseload Forecast Council (CFC) to report to the Governor and Legislature on recommendations for procedures and tools for providing cost-effective racial and ethnic impact statements (REISs) for those forecasts produced by the CFC in the areas of criminal justice, human services, and education.<sup>4</sup>

There is no universal definition of REISs, but they are generally considered to be tools for policymakers to assess potential disproportionate racial and ethnic impacts when considering legislation or other proposals. At least three states that have either proposed or implemented REISs utilized the exact same language in their respective bills: that they must be impartial, simple, understandable, and include estimates based on available data.

### Format of Report and Process

The first component of the CFC's analysis involved a review of the experiences of other states that have implemented or proposed to implement REISs.<sup>5</sup> The second involved assessing the availability and quality of race and ethnicity data in Washington State with respect to the programs listed in the budget proviso: criminal justice, human services, and education forecasts produced by the CFC.<sup>6</sup> Toward that end, the CFC sent a Data Inventory<sup>7</sup> to all of the organizations for which the CFC produces a forecast in these areas, specifically one inventory for each of the CFC's ten forecast technical workgroups.

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<sup>4</sup> Section 125(2) of the 2016 Omnibus Supplemental Operating Budget requires that:

(a) The caseload forecast council, in cooperation with the appropriate legislative committees and legislative staff, the office of financial management, the department of corrections, the department of social and health services, the administrative office of the courts, the minority and justice commission, the Washington state institute for public policy, the department of early learning, the student achievement council, the state board of education, the sentencing guidelines commission, and a person from communities at large deemed appropriate must develop recommendations for procedures and tools which will enable them to provide cost-effective racial and ethnic impact statements to legislative bills affecting criminal justice, human services, and education caseloads forecasted by the caseload forecast council. The recommendations for the racial and ethnic impact statements must be able to identify the positive and negative impacts on communities as a result of proposed or adopted legislation.

(b) The caseload forecast council shall submit a report to the governor and appropriate committees of the legislature on or before December 31, 2016, outlining recommendations for procedures and tools necessary to provide racial and ethnic impact statements to criminal justice, human services, and education caseloads, as well as outlining implementation cost estimates and potential funding sources.

<sup>5</sup> The state-by-state analysis may not reflect a comprehensive summary of all REIS-related legislative activity.

<sup>6</sup> Appendix D lists all of the caseloads forecasted by the CFC for which a REIS might apply based on the proviso language.

<sup>7</sup> See Appendix B for the Data Inventory, in which the CFC received a 100% response rate.

In addition, CFC staff sent a REIS Questionnaire<sup>8</sup> to all of the entities listed in the proviso to assess the feasibility of producing REISs in the subject area of criminal justice, human services, and education. The report is organized as follows:

1. Experience with REISs in Other States
2. Experience with REISs in Washington State
3. Results of the Data Inventory
4. Results of the Questionnaire
5. Recommendations

## **1. Experience with REISs in Other States**

The CFC's research on implementation of REISs in other states yielded some high-level findings:

- *Who produces the REISs?* 10 of the 11 states that proposed or adopted REISs assigned the production of REISs to one of two entities: 60 percent assigned REIS production to legislative organizations and 40 percent to criminal justice organizations.
- *What is the scope of the REISs?* All 11 states either require or proposed to require REISs in criminal justice, two states require them for state grant applications, and only one state, Oregon, requires them in the human services arena, limited to child welfare.
- *How is a REIS triggered?* The methods for triggering a REIS request vary and range from all criminal justice fiscal notes to a written request by a majority of a legislative committee or one member from each political party in the house of origin.

Currently, four states have implemented full REISs: Iowa, Minnesota, Connecticut, and Oregon.

### Iowa

Iowa prepares a general REIS that is updated annually, but also on occasion produces bill-specific REISs. In 2008, Iowa passed legislation requiring minority impact statements for certain criminal justice legislation, as well as for applications for grants from state agencies. The Iowa Legislative Services Agency prepares a general minority impact statement which is updated annually and attached to all bills meeting the criteria. Sometimes the Legislative Services Agency produces a bill-specific REIS. Applicants for state grants must complete a minority impact statement form.

### Minnesota

The Minnesota Sentencing Guidelines Commission (MSGC) began producing racial impact statements in 2008, although they are not required to do so by law. In 2015, the MSGC established an official policy regarding racial impact statements. When the MSGC is assigned a fiscal note, the result of the fiscal note determines if a racial impact statement is warranted based

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<sup>8</sup> See Appendix C for the REIS Questionnaire, for which the CFC received a 92% response rate.

on criteria established by the 2015 policy. These criteria concern changes to the felony offender population and/or changes to the state prison population estimated in the fiscal note.

### Connecticut

Starting in 2009 in Connecticut, whenever a committee reports a bill favorably which, if passed, would increase or decrease the pretrial or sentenced population of correctional facilities in this state, a majority of the committee members present may request that a REIS be prepared. The Office of Legislative Research and the Office of Fiscal Analysis are charged with preparing REISs. To our knowledge, Connecticut has yet to produce a REIS.

### Oregon

In Oregon, effective 2014, REISs may be requested for proposed legislation that would impact the criminal offender population or the recipients of child welfare services. One member of the Legislative Assembly from each major political party must sign a written request for the Oregon Criminal Justice Commission to prepare a REIS. Additionally, Oregon requires a REIS for each state grant application. The form is similar to Iowa's. The REIS-related provisions of the bill passed in 2014 are set to expire on January 2, 2018.

**Table 1. Racial and Ethnic Impact Statements: A Summary of States**

<b>State and Year Started</b>	<b>Responsible Organization (Who)</b>	<b>Scope (What)</b>	<b>How is a REIS Triggered?</b>	<b>Currently Producing REISs?</b>
Connecticut 2009	Office of Legislative Research and Office of Fiscal Analysis	Criminal Justice bills that increase or decrease the pretrial or sentenced population of state correctional facilities	A majority of members of a committee	Yes, and in statute; there have been no requests to date
Iowa 2008	Legislative Services Agency	Criminal Justice bills and State grant applications	All crime-related fiscal notes and grant applications	Yes, and in statute
Minnesota 2006	MN Sentencing Guidelines Commission	Criminal Justice bill fiscal notes assigned to the MSGC	Specific criteria based on results of a fiscal note	Yes, but not a statutory requirement
Oregon 2014	Oregon Criminal Justice Commission	Criminal Justice bills, recipients of human services and State grant applications	One member of the Legislative Assembly from each political party requests in writing	Yes, and in statute
Arkansas 2013	Office of Economic and Tax Policy, AK Coalition for Juv. Justice & UA – Little Rock	Bills that will create a new offense, change an existing offense, change the penalty for an offense or change existing sentencing, parole or probation procedures	Every bill described under scope	No, SB 1093 bill did not pass
Florida 2014	Office of Program Policy Analysis and Government Accountability	Bills or proposed amendments to the state constitution that affect the criminal offender population or recipients of human services	A request from a member of the Legislature	No, HB 237 and SB 336 did not pass
Illinois 2011	Racial and Ethnic Impact Research Task Force	The Task Force reported on standardizing collection of racial and ethnic data	REIS was one of the possible uses of the data	No
Maryland 2012	Dept. of Legislative Services	Bills that alter the elements of a criminal offense, alter the penalties for a criminal offense, or alter existing sentencing parole or probation procedures	Every bill described under scope	No, SB 679 bill did not pass

<b>State and Year Started</b>	<b>Responsible Organization (Who)</b>	<b>Scope (What)</b>	<b>How is a REIS Triggered?</b>	<b>Currently Producing REISs?</b>
Mississippi 2014	Office of Public Safety Planning & the Mississippi DOC	Bills that affect the criminal offender population	One member of the Legislature from each major political party	No, SB 2561 did not pass
New Jersey 2016	Office of Legislative Services	Each proposed criminal justice bill, resolution, or amendment that would affect pretrial detention, sentencing, probation or parole policies	Every bill described under scope	No, SB 677 and AB 3677 did not pass
Texas 2009	Legislative Budget Board	Bills or resolutions that authorize or require a change in the sanctions applicable to adult felons	Every bill or resolution described under scope	No, HB 930 and SB 164 did not pass
Wisconsin 2014	Joint Review Committee on Criminal Penalties	Any bill that creates a new crime, modifies an existing crime, or modifies penalties	Every bill described under scope	No, SB 538 and AB 752 did not pass

## **2. REISs in Washington State**

Washington State does not have specific requirements for preparation of REISs, but there are a few agencies that provide similar information. This section describes those efforts.

### Children’s Administration:

In 2007 the Legislature directed DSHS to convene an advisory committee to investigate racial and ethnic disproportionality in the child welfare system. The effort resulted in reports by both the Washington State Institute for Public Policy (WSIPP) and the advisory committee. Beginning in 2010, an annual report is published highlighting the issues in the child welfare system and the progress of the efforts to remedy those issues. As part of this ongoing process, the Race Equity Analysis Tool was developed. This tool is to be used in, “. . . the development, implementation and evaluation of policies, initiatives, programs and budgets to identify and address their impacts on race equity.” The Race Equity Analysis Tool is a de facto racial and ethnic impact statement.

### Economic Services Administration:

Also in DSHS, the Economic Services Administration has nearly completed development of a tool for assessing racial and ethnic proportionality in Washington’s Basic Food program. The Proportionality Index is a single figure that measures the racial and ethnic distribution of clients in those programs compared to the distribution of individuals that are likely to be eligible based on the Census American Community Survey. The index will be used to identify opportunities to address racial/ethnic disproportionality both statewide and regionally.

### Department of Social and Health Services Research and Data Analysis:

The DSHS Office of Research and Data Analysis provides state and county level race and ethnicity information for clients served by major programs within DSHS.<sup>9</sup> Clients are categorized as either White Non-Minority or Any Minority. Those identified as belonging to a minority group are included in the percentage for each group specified.

### Washington State Board of Health:

While not REISs, the Washington State Board of Health produces a tool for policy development called Health Impact Reviews (HIRs). An HIR is an analysis of how a proposed legislative or budgetary change will likely impact health and health disparities in Washington. RCW 43.20.285<sup>10</sup> authorizes the State Board of Health (Board) to conduct HIRs in collaboration with the Governor’s Interagency Council on Health Disparities (Council).

The trigger for an HIR is a request from either the Governor or a state legislator. During legislative session, per statute, Board staff have ten days from receipt of a request to complete the review, though in the past they have worked with legislators to extend the time based on the

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<sup>9</sup> Link to RDA’s public data on Race/Ethnicity of DSHS Clients, by program area, available both statewide and by county: <http://clientdata.rda.dshs.wa.gov/Home/ShowReport?reportMode=1>

<sup>10</sup> See Appendix F for the full statute, RCW 43.20.285.



complexity of the analysis and staff availability. Due to available time and resources, the process for assessing impacts and the depth of the analysis must be flexible.

Given the time frame, HIRs rely on existing data, published scientific literature, and occasionally, expert opinion. The general process for conducting a HIR requires a number of steps including: (1) Notification of an HIR request to Board and Council members, stakeholders, and other interested parties via email and the Board's website; (2) Initial literature review and development of a working conceptual model that depicts the potential causal pathways linking the proposal to its ultimate impact on health and health disparities; (3) Outreach with stakeholders, community members, and other experts as necessary; (4) Targeted literature review for each of the pathways illustrated in the conceptual model; (5) Evaluation of the evidence using set criteria; and (6) Dissemination of the completed HIR and placement on the Board's website. Board and Council members are given the opportunity to provide support and feedback throughout the review process as time allows. Board staff also monitor the progress of a proposal through the Legislature to ensure the review is being conducted on the most recent version and to provide updates when possible.

The Board has one full-time analyst dedicated to HIRs, and a half-time analyst during legislative session when resources allow. Most reviews are requested during session, though some are requested during the interim, and the number of requests completed over the past three years has ranged from 7 to 12 per year.

The statute allows the number of HIRs to be limited, and this has happened on occasion in communication with the legislator making the specific request. Additionally, in cases of resource constraints, the Board has a system for prioritizing HIR requests.<sup>11</sup> Generally, the scope of the HIR and the level of community engagement is limited by the time allotted. When the data are readily available, Board staff estimates that the time to complete an HIR is around 40 to 50 hours. That time may be divided over the course of a week during legislative session or over the course of a month during interim. When the data are not readily available, the HIR can take significantly more time to complete.

#### Recent Legislative Activities:

The push to implement REISs in Washington State began on March 8, 2013, at a joint meeting of the Washington State Minority and Justice Commission (MJC) and the Washington State Sentencing Guidelines Commission (SGC), where the MJC gave a presentation on racial and ethnic disproportionality. At the next meeting of the SGC, they formed the Racial and Ethnic Impact Statement Subcommittee. The work of the Subcommittee culminated with the drafting of what would become SB 6257 (Sentencing Information Concerning Racial Disproportionality).

SB 6257, which would have required the CFC to publish annual summaries of racial disproportionality in adult felony sentencing and juvenile dispositions, was introduced during the 2014 Legislative Session, and it did not make it out of committee. Since SB 6257, the subject of REISs has been the main focus or part of 10 legislative proposals over the 2015 and 2016

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<sup>11</sup> See DOH's Health Impact Review website for more detail: <http://sboh.wa.gov/OurWork/HealthImpactReviews>

legislative sessions. The language from SSB 5752 (Information Concerning Racial Disproportionality) from the 2015 Legislative Session was inserted as a proviso into the 2016 Supplemental Operating Budget.<sup>12</sup>

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<sup>12</sup> See Appendix E for a more detailed summary of the progression of proposed legislation in Washington State that ultimately led to the Legislature’s directive to produce this report.

### 3. Results of Data Inventory and Information System Detail

In May 2016, CFC staff sent a Data Inventory to membership in all of its ten caseload forecast technical workgroups to cover the wide range of agencies and related data systems that would be required to produce REISs. In the REIS Questionnaire subsequently distributed to entities listed in the proviso in August 2016, CFC staff asked a follow up question about what data systems would need to be accessed and what caveats and considerations would be involved.

Some of the challenges involved with the collection and analysis of race and ethnicity data involve the vast number of systems covering the wide array of programs, as summarized in *Table 2. Summary of Data Inventory*. A concern noted in the Data Inventory and Questionnaire involved the need to establish a data infrastructure and process for the uniform production and presentation of race and ethnicity data. If the responsibility for REISs were assigned to an external organization, more resources would be required to establish and maintain connectivity to race and ethnicity data across a potentially wide range of agencies and departments, as well as data sharing agreements and amendments to agency technology, risk management, and security policies.

Another challenge involves variation between program areas with respect to how race and ethnicity are classified, and in some cases, such as the CFC's sentencing database, ethnicity data are not collected. OFM, which produces the annual state population forecast, categorizes race and ethnicity in the following format:

- Race Categories: (1) White, (2) Black or African American, (3) American Indian or Alaska Native, (4) Asian, (5) Native Hawaiian or Other Pacific Islander, and (6) Two or More Races.
- Ethnic Origin Categories: (1) Hispanic or Latino, and (2) Not Hispanic or Latino

Assuming the process utilizes OFM state population race and ethnicity categories as the benchmark, some reconciliation would be required in terms of how race and ethnicity are categorized. For example, OFM Forecasting classifies Asian separately from Native Hawaiian or Other Pacific Islander, but the Children's Administration (FamLink) and Department of Early Learning Data Management System (DMS) classify Asian and Pacific Islander in one category. Another example involves the CFC sentencing database, in which multi-racial input from the Judgement and Sentence (J&S) forms is collapsed into one race, whereas the OFM race data have a separate category for data indicating two or more races.

**Table 2. Summary of Data Inventory**

<b>Subject Area and Caseload</b>	<b>Governing Agency</b>	<b>Data Source</b>	<b>Caveats (i.e. data reliability, quality, data system issues)</b>
<b>Criminal Justice:</b>			DOC data: Reliability is only as good as the conversation between staff and offenders in reporting their race and ethnicity; CFC Data: J&S forms vary by county, 1% missing race data.
Adult Inmate	DOC	OMNI / CFC Sentencing Database	
Community Supervision	DOC		
<b>Human Services</b>			
DSHS Total	DSHS	RDA Client Services Database; ProviderOne	
Nursing Homes	DSHS ALTSA	CARE; MDS	Data not available for Nursing Homes
In-Home Services (AP and IP)	DSHS ALTSA		Not a required field, from 1.7% to 8.5% non-response rate
Residential Services (ARH, ARC, AL)	DSHS ALTSA		
Individual Provider (IP) Hours	DSHS ALTSA		
Foster Care (Licensed, Unlicensed, Extended)	DSHS CA	Famlink / SACWIS	In 20-25% of cases when tribal affiliation cannot be verified, the race remains Native American.
Behavioral Rehabilitation Services	DSHS CA		
Adoption Support	DSHS CA		
Medicaid Personal Care (IP, AP, ARC, AFH)	DSHS DDA	CARE	Not a required field, non-response rate is about 2.7%
Temporary Assistance for Needy Families	DSHS ESA	ACES	10 to 15% of ESA's clients are missing race data and varies by program
Aged, Blind, Disabled Grant	DSHS ESA	ACES	
Juvenile Rehabilitation	DSHS JR	ACT; WSP arrest data	Self-reported, no way of determining accuracy
Working Connections Child Care	DEL	ACES, WCAP	
Early Childhood Education and Assistance	DEL	ELMS	
Early Support for Infant and Toddlers	DEL	DMS	
<b>Education</b>			
Common Schools	OSPI	CEDARS	
Charter Schools	Charter School Commission	CEDARS	
Bilingual Education	OSPI	CEDARS	
Special Education	OSPI	CEDARS	
College Bound Scholarship Program	WSAC	CBS Pledge Data, OSPI, URR	Institutions could have different rules when more than one race is reported

#### 4. Results of Questionnaire

The CFC developed a questionnaire requesting feedback from the relevant agencies on whether REISs should be produced internally by the agency implementing the program versus an external organization, whether a REIS could be provided within the three-day time frame of a fiscal note, what resources would be required, any non-resource related considerations, and any additional feedback related to the production of REISs.

Some general themes emerged from the questionnaire:

- Staff expertise is important in determining which organization(s) are most suitable to produce REISs.
- The subject area of criminal justice seems to be more feasible than other areas in terms of immediate cost-effectiveness, readiness, and response time.
- The ability to answer the questions and provide fiscal estimates is heavily dependent on the format of the REIS, the nature of the proposed legislation, and the number of REISs that would be requested.
- A product that agencies could produce in three days would be limited to aggregate data comparison and analysis.
- Community input would not be feasible within a three day time limit.

Below are more detailed responses to the questionnaire, organized as follows:

- A. Internal or External Production of REISs
- B. Scope and Triggering of REISs
- C. Cost Effectiveness, Timeliness, and Format of REISs
- D. Additional Considerations

##### A. Internal or External Production of REISs

Responses varied on the preference to produce REISs internally or externally. In general, those organizations lacking the staff expertise preferred that the REIS be produced externally. In addition, organizations that are not responsible for implementation of a program tended to prefer that an external organization produce the REIS. Most organizations with direct responsibility for implementing a program preferred to produce REISs internally.

Agencies heavily emphasized the importance of staff expertise, which is housed in the agencies responsible for governance and implementation of the programs in criminal justice, human services, and education. Most of the agencies responsible for implementing one or more of the programs that would be subject to REISs responded that they would prefer to produce the REISs internally since their agency is most familiar with the data and has the program expertise.

In addition to staff expertise, some organizations provided specific suggestions around staff training, including “Undoing Institutional Racism.”<sup>13</sup>

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<sup>13</sup> <http://pinwseattle.org/register.php>

In our analysis of proposed and enacted legislation from other states, a key component in the language involves ensuring that external entities producing REISs must have access to the data from the relevant state agencies, and that analysis be limited to readily available data, such as:

- New Jersey’s House Bill 3677: “State agencies shall make data available to the Office of Legislative Services for the purposes of preparing racial and ethnic impact statements.”
- Maryland’s Senate Bill 679: REISs are attached to fiscal notes and shall include a “criminal justice policy impact statement,” which must include “the potential impact of the bill on racial and ethnic groups . . . to the extent information is available....”

## B. Scope and Triggering of a REIS

Triggers or parameters for production of REISs include a request by a majority of a committee, a member from both parties of the proposed legislation’s house of origin, and time frame parameters such as prior to major legislative cut-off dates.

Respondents provided options for limiting the scope or triggering of a REIS to support cost-effectiveness and feasibility. For example, the state could take a phased approach by starting with the subject area of criminal justice as a pilot to gauge the frequency of requests and format that is most meaningful for users of REISs. This would allow for more accurate fiscal estimates in other subject areas.

Most respondents recommended that the trigger should require more than just a fiscal note request. A fiscal note request would be a necessary but not sufficient condition for a REIS request. Additional trigger suggestions included that the request be made by more than one legislator or the committee chair in the committee of jurisdiction, and possibly only for bills that have passed out of a policy committee. The Sentencing Project proposed a similar requirement: “An alternative process could be to produce a racial impact analysis for any sentencing legislation that has been passed out of committee and prior to floor consideration.”<sup>14</sup> Some states with either proposed or enacted REIS legislation require a REIS request to come from one member from each political party.

Other examples from the questionnaire include placing limits on the number of bills that could be requested or limiting the bills by magnitude of fiscal impact or magnitude of impact on clients and/or offenders. Another recommendation entails submitting a REIS request in advance of legislative session or before certain cut-offs during session to give agencies the ability to budget their time and resources accordingly.

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<sup>14</sup> <http://www.sentencingproject.org/publications/racial-impact-statements-as-a-means-of-reducing-unwarranted-sentencing-disparities/>

### C. Cost-effectiveness, Timeliness, and Format of a REIS

A key impact on determining cost and cost-effectiveness, expressed in most of the responses, was the level of detail and format for the REIS. One of the biggest challenges in providing a fiscal estimate is not knowing the complexity or format of the REIS as well as what the frequency of REIS requests will be. Primarily for this reason, the fiscal estimates varied by organization because each had to make some basic assumptions. Another important distinction was whether the REIS would be an issue of judgement around the policy impact of proposed legislation versus a purely data-driven, technical caseload analysis. The former is likely to be more subjective, the latter to be more technical.

The questionnaire asked organizations to provide a fiscal estimate should they be responsible for the production of REISs. The responses ranged widely, from 1.0 to 5.0 FTEs, to indeterminate, depending on factors such as (1) data quality and availability, (2) assumptions around the expectations, format, and complexity of a REIS, (3) the number requested per year, (4) the timeframe and turn-around required, (5) the size of the agency and current availability of resources, and (6) the breadth of responsibility in terms of programs they administer.

The questionnaire asked organizations whether they could provide a REIS within the typical fiscal note time frame (three days), and if not, what a reasonable time frame might be. None of the respondents replied that the REIS could be produced within three days, 80 percent responded that it could not be produced within three days, and 20 percent responded that it depended on the format. For example, some agencies indicated that a straightforward quantitative comparison of the racial distribution of the “at-risk” or “target” population in Washington State based on the annual OFM population forecast against the racial distribution of the actual caseload could be accomplished within three days.

A REIS that goes beyond a quantitative comparison and includes a qualitative and policy-oriented assessment of the impact of a proposed policy, including the involvement of the community and stakeholders in the production of the REIS, would take significantly longer (from 10 days to a month or more).

A key concern from CFC staff, should the CFC be mandated to produce REISs outside of criminal justice, is the need to rely heavily on agency staff for both access to data (multiple datasets and data sharing agreements), understanding of the data, caveats, and program expertise. The CFC currently presents 23 official forecasts (which include over 200 sub-forecasts) three times per year with a staff of two full-time forecasters. The CFC is a micro-agency with nine staff in total shared between caseload forecasting and sentencing driven functions which involve maintaining a sentencing database and producing prison bed impact statements for criminal justice fiscal notes.

If the CFC’s role in providing REISs were to expand beyond criminal justice, the fiscal impact would be considerable. It would be higher than if the REISs were produced by the agencies responsible for implementing the relevant programs because the CFC would still rely on agency staff with expertise and direct access to and understanding of the quality and limitations of their race and ethnicity data.

#### D. Additional Considerations

A few common themes emerged from the open-ended request for additional considerations in developing REISs.

- Summaries of issues around impacts to communities can be more subjective and controversial, and this may be a challenge for agencies to resolve in a technical, uniform way.
- A few entities responded with an emphasis of their policy neutral role in state government, whereas REISs could potentially involve significant policy analyses. This also includes CFC staff, which are data scientists by state mission, not policy analysts.
- Some respondents not responsible for implementing the programs and with non-partisan roles raised the concern that authoring REISs could result in questions about their objectivity, and could, in some instances, compromise their policy neutral role. The CFC, along these lines, holds at first and foremost of its mission, its adherence to neutrality and non-partisanship in creating entitlement forecasts that drive 80 percent of the state's budget, and neutrality in the production and presentation of adult sentencing and juvenile disposition data that drive criminal justice fiscal notes, statistical summaries, and open public record requests on any given day. A few responses noted that were the CFC to assume responsibility for the production of REISs, it could appear to some to compromise the agency's neutrality due to the subjective and controversial nature of the topic and the possibility that some findings could be interpreted as policy recommendations.
- The Washington State Institute for Public Policy wondered whether a REIS must consider all possible outcomes? If not, how should the agency providing the REIS decide which outcome(s) should be considered?
- Some organizations indicated that a REIS would have limited utility if it does not identify the underlying factors that contribute to racial disproportionalities.



## 5. Recommendation – Criminal Justice Pilot Program

The CFC considered options for implementing REISs for all of the caseloads the CFC forecasts. To maximize the cost-effectiveness, reliability, and usefulness of REISs, the CFC recommends implementing a pilot program, conducted by the CFC, for fiscal notes concerning adult felony sentencing that impact the prison population. The pilot could last for a fixed time, such as three years, after which the usefulness of REISs will be evaluated. Based on the CFC's research, there are data, staff, and resource limitations that would need to be addressed before implementing REISs in other areas.

Prior to each session and for adult felony prison sentences only, the CFC would prepare a general disproportionality report. This report would contain a table of percentages for CFC crime forecasting categories by race/ethnicity. The table will show a distribution of percentages based on the total number of adult felony sentences in each crime category as they are distributed by race and ethnicity. Additionally, there will be a table of percentages of Washington State's general adult at-risk population (ages 18-54) by race and ethnicity for comparison against the crime forecasting category table.

The report will feature an introductory paragraph, followed by the tables, followed by one or more paragraphs summarizing the figures. The report will also include a list of caveats and limitations of the figures presented in the tables, along with a complete list of felony offenses in each category.

This information can be used to determine if there may be potential disproportionate racial and ethnic impacts when formulating legislation. For example, a bill could raise the Seriousness Level of a felony offense. The drafter(s) and/or sponsor(s) can refer to the report, determine which crime forecasting category the felony offense falls within, and compare that category to the general at-risk population. This would provide an idea of the potential racial and ethnic impact, but it is by no means definitive.

For each official CFC adult felony sentencing-related fiscal note request that would impact the prison population, one of three options could be used to present potential racial/ethnic impacts. Under all three options, racial and ethnic impacts would be included in the fiscal note and would consist of an introductory paragraph followed by a table displaying percentages for the general adult at-risk population by race and ethnicity and percentages for either the proper crime forecasting category or a specific offense (when available and appropriate) by race and ethnicity. This would be followed by a paragraph or two highlighting the potential racial and ethnic impacts and caveats concerning interpretation of the figures.

**Option 1:** In the case of a bill that has an indeterminate impact, such as a bill that creates a new felony offense, the CFC, in consultation with the Department of Corrections, would determine which crime forecasting category the offense would be categorized in. Under the racial and ethnic impact section of the fiscal note, a table of percentages of the adult at-risk population and the proper crime forecasting category will be inserted and the text above and below the table would be tailored to the fiscal note.

**Option 2:** In the case of a fiscal note that impacts an existing felony offense where there is an ample number of sentences to create an offense specific table by race and ethnicity, the adult felony sentence figures for that offense, by race and ethnicity, would replace the crime forecasting category figures in Option 1. The table would be inserted into the racial and ethnic impact section of the fiscal note and the text above and below the table would be tailored to the fiscal note, as outlined in Option 1.

**Option 3:** In the case of a fiscal note that impacts an existing felony offense where there is not an ample number of sentences to create an offense specific table, the procedures outlined in Option 1 would be followed, with the exception of determining the crime forecasting category because that is already known.

If a bill would impact an existing felony offense where there are very few adult felony sentences, and the crime forecasting category in which the offense is categorized also has few adult felony sentences, such as murder in the first degree, the only racial and ethnic impact information in that section of a fiscal note will be a paragraph explaining why racial and ethnic impacts are not appropriate due to the small number of sentences for that offense and the crime forecasting category in which the offense is categorized.

After a defined period, the Washington State Institute for Public Policy or the Joint Legislative Audit and Review Committee could conduct an evaluation of the REIS pilot program to determine if the racial and ethnic impact information is being utilized and if stakeholders find it useful. Once the determination is made, policy makers can decide whether to continue the program and expand it to other agencies and policy areas.

## **Acknowledgments**

CFC staff have many people to thank for their contributions to this report, in particular staff from the Administrative Office of the Courts, the Department of Corrections, the Department of Early Learning, the Department of Social and Health Services, the Legislature, the Minority and Justice Commission, the Office of Financial Management, the Office of Superintendent of Public Instruction, the State Board of Education, the Student Achievement Council, the Sentencing Guidelines Commission, the Washington State Board of Health, and the Washington State Institute for Public Policy.

Additionally, we would like to thank staff from the Connecticut General Assembly's Office of Fiscal Analysis, the Iowa Legislature's Fiscal Services Division, the Oregon Criminal Justice Commission, and the Minnesota Sentencing Guidelines Commission.

For questions regarding this report, please contact either Elaine Deschamps (360) 664-9371, [elaine.deschamps@cfc.wa.gov](mailto:elaine.deschamps@cfc.wa.gov) or Ed Vukich (360) 664-9374, [ed.vukich@cfc.wa.gov](mailto:ed.vukich@cfc.wa.gov).

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## Appendix A. Definitions of Racial and Ethnic Impact Statements:

Below is a sample of definitions of a racial impact statements drawn from legislative proposals or other policy documents. Refer to *Table 1. Racial and Ethnic Impact Statements: A Summary of States* for a list of other bills nationwide containing various definitions of REISs.

State of Oregon, Senate Bill 463: “A racial and ethnic impact statement must be impartial, simple and understandable and must include, for racial and ethnic groups for which data are available, the following: (a) an estimate of how the proposed legislation would change the racial and ethnic composition of the criminal justice offender population or recipients of human services; (b) A statement of the methodologies and assumptions used in preparing the estimate; (c) If the racial and ethnic impact statement addresses the effect of 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.”

Language from proposed legislation in both Florida and Mississippi utilize the same language as Oregon: that the REIS must be impartial, simple, understandable, and must include estimates based on available data.

State of Wisconsin, Senate Bill 538: “The racial impact statement shall be prepared by the joint review committee on criminal penalties. The joint review on criminal penalties may obtain the assistance of any agency in the executive branch of state government in preparing the racial impact statement. If requested for assistance, an agency shall promptly provide all necessary information to the joint review committee on criminal penalties.”

State of Arkansas’ SB 1093: “The racial impact statement shall include an estimate of the number of criminal cases per year that the bill will affect, the impact of the bill on members of racial minority groups, the effect of the bill on the operations of correctional institutions and any other matter the joint review committee on criminal penalties considers appropriate. In preparing the racial impact statement, the joint review committee on criminal penalties shall issue a finding as to whether the bill has a disparate impact on members of racial minority groups. The racial impact statements shall be printed as an appendix to the bill and shall be distributed in the same manner as amendments.” The original bill did not pass but it did mandate a study.

The Seattle Race and Social Justice Initiative: “The Racial Equity Toolkit lays out a process and a set of questions to guide the development, implementation and evaluation of policies, initiatives, programs, and budget issues to address the impacts on racial equity.”<sup>15</sup>

King County, Executive Equity and Social Justice: “The Equity Impact Review (EIR) tool is a process and a tool to identify, evaluate, and communicate the potential impact - both positive and negative - of a policy or program on equity.”<sup>16</sup>

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<sup>15</sup>See the Toolkit here: [http://www.seattle.gov/Documents/Departments/RSJI/RSJI-Racial\\_Equity\\_Toolkit-2016.pdf](http://www.seattle.gov/Documents/Departments/RSJI/RSJI-Racial_Equity_Toolkit-2016.pdf)

<sup>16</sup> King County Equity Impact Process Overview: [http://www.kingcounty.gov/~media/elected/executive/equity-social-justice/2016/The\\_Equity\\_Impact\\_Review\\_checklist\\_Mar2016.ashx?la=en](http://www.kingcounty.gov/~media/elected/executive/equity-social-justice/2016/The_Equity_Impact_Review_checklist_Mar2016.ashx?la=en)

California’s State Interagency Team Workgroup to Eliminate Disparities & Disproportionality: the Racial Impact Statement is “a systematic examination of how different racial and ethnic groups will likely be affected by a proposed action or decision by any one system (health and human services, educational, legal, correctional, etc).”<sup>17</sup>

State of New Jersey, House Bill 3677: “Racial and ethnic impact statements are a tool to guide policymakers in proactively assessing how proposed sentencing initiatives affect racial and ethnic disparities in the criminal justice system. Similar to fiscal and environmental impact statements, they provide legislators and state agency executives with a statistical analysis of the projected impact of policy changes before legislative deliberation or rule adoption.”

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<sup>17</sup>California Racial Impact Statement and PowerPoint from the Workgroup to Eliminate Disparities and Disproportionality:

[http://calswec.berkeley.edu/sites/default/files/uploads/ca\\_racial\\_impact\\_statement\\_tool\\_final.pdf](http://calswec.berkeley.edu/sites/default/files/uploads/ca_racial_impact_statement_tool_final.pdf)

[http://www.courts.ca.gov/documents/BTB\\_XXII\\_IJ\\_2.pdf](http://www.courts.ca.gov/documents/BTB_XXII_IJ_2.pdf)

## Appendix B. Data Inventory

In accordance with the 2016 Supplemental Budget Proviso Sec. 125 (2), CFC staff are taking a data inventory on race and ethnicity for CFC forecasted criminal justice, human services, and education caseloads. Please answer the following questions in as much detail as possible and return to [elaine.deschamps@cfc.wa.gov](mailto:elaine.deschamps@cfc.wa.gov) as soon as possible but no later than May 31, 2016.

Thank You!

1) Are data on race and ethnicity for the population encompassing this caseload being collected, and do you have access to the data?

2) Who is reporting the information (i.e. parent, social worker, school counselor, court clerk)?

3) Can you provide a list of the categories?

i.e., OFM Population Data are categorized as follows: Race Categories: 1) White, 2) Black or African American, 3) American Indian or Alaska Native, 4) Asian, 5) Native Hawaiian or Other Pacific Islander, and 6) Two or More Races. Ethnic Origin Categories: 1) Hispanic or Latino, and 2) Not Hispanic or Latino

4) What information system(s) are the race and ethnicity data being housed and/or extracted from?

5) Are the data on race and ethnicity updated and if so, how often?

6) What are some of the caveats and/or challenges (i.e. data quality, reliability, data system issues)?

## Appendix C. Racial and Ethnic Impact Statement Questionnaire

With your organization’s cooperation, the Caseload Forecast Council (CFC) is statutorily required to develop recommendations for procedures and tools for the cost-effective provision of racial and ethnic impact statements (REISs) for bills in the areas of criminal justice, education, and human services.<sup>18</sup> In answering the following questions, please assume REISs would be required on all proposed legislation impacting your organization (i.e. criminal justice, education, human services or subset thereof).

While there is no universal definition of a REIS, it is generally considered to be a tool for policymakers to assess potential racial and ethnic disproportionalities or disparities when considering legislation or other proposals. REISs vary in complexity and format. Please see the “REIS – Summary of States” table for examples of REISs from other states.

1. A. Would it be possible for your organization to provide REISs within current resources (data, staffing, etc.)?  Yes  No  
B. IF NO: What would be required to do so? If a fiscal note were requested to assume this responsibility, please estimate the resources needed (FTEs and 17-19 biennial costs, by fiscal year and fund):
2. What data system(s) would you need to access, and what considerations and caveats are involved?
3. A. If your organization were tasked with the provision of REISs, could they be completed within three days (the fiscal note time frame)?  Yes  No  
B. If not, how much time would be required to produce full REISs?  
C. What type of product could your organization complete within three days?
4. What potential non-resource related challenges would your agency face in developing REISs?
5. Would your organization prefer to a) develop REISs related to your organization’s programs internally, or b) have the REISs developed by an external organization? What advantages and/or challenges would you anticipate in each case?
6. What limits on scope<sup>19</sup> and/or triggering<sup>20</sup> of REISs could help resolve some of the issues in the questions above while still providing valuable information to policymakers? How would your organization structure the REIS process to make it as cost-effective and informative as possible?
7. Do you have any additional feedback regarding REISs not covered by this questionnaire?

*We greatly appreciate your feedback. Please email your responses to Elaine Deschamps at [elaine.deschamps@cfc.wa.gov](mailto:elaine.deschamps@cfc.wa.gov) by August 31<sup>st</sup>.*

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<sup>18</sup> The full proviso text was attached to the questionnaire.

<sup>19</sup> i.e. REISs limited to criminal justice vs. expanded to other subject areas such as education, human services, etc.

<sup>20</sup> i.e. REISs required of all proposed legislation vs. specific requirements such as a written request by a legislator or other specific parameter.

**Appendix D: Caseloads Forecasted by the Caseload Forecast Council in Criminal Justice, Human Services, and Education**

<b>Criminal Justice:</b>
Adult Inmate
Community Supervision
<b>Human Services:</b>
Nursing Homes
In-Home Services (AP and IP)
Residential Services (ARH, ARC, AL)
Individual Provider (IP) Hours
Licensed Foster Care
Unlicensed Foster Care
Extended Foster Care
Behavioral Rehabilitation Services
Adoption Support
Medicaid Personal Care (IP, AP, ARC, AFH)
Temporary Assistance for Needy Families
Aged, Blind, Disabled Grant
Juvenile Rehabilitation
Working Connections Child Care
Early Childhood Education and Assistance
Early Support for Infant and Toddlers
<b>Education:</b>
Common Schools
Charter Schools
Bilingual Education
Special Education
College Bound Scholarship Program



## **Appendix E. History of Proposed REIS Legislation in Washington State**

The pursuit of REISs in Washington State began on March 8, 2013, when the Washington State Minority and Justice Commission gave a presentation on racial and ethnic disproportionality to the Washington State Sentencing Guidelines Commission. At the next meeting of the Sentencing Guidelines Commission, on April 12, 2013, the Racial and Ethnic Impact Statement Subcommittee was formed. The work of the Subcommittee culminated with SB 6257 (Sentencing Information Concerning Racial Disproportionality).

During the 2014 Legislative Session, SB 6257 was referred to the Senate Committee on Human Services & Corrections. The bill, which remained in committee, would have required the CFC to publish an annual summary of racial disproportionality in adult felony sentencing and juvenile dispositions.

During the 2015 Legislative Session, REIS language was included in HB 1885 (Addressing and Mitigating the Impacts of Property Crimes in Washington State), which was referred to the House Committee on Public Safety. The bill would create the Washington Justice Commission, one duty of which would be to, upon request from the Legislature, prepare REISs for proposed legislation that would impact the criminal offender population or recipients of human services.

Substitute House Bill 1885 was substituted and passed the House Committee on Public Safety and was referred to the House Committee on Appropriations, but the provisions regarding the Washington Justice Commission and REISs were dropped in the substitute. Second Substitute House Bill 1885 was substituted and passed the House Committee on Appropriations, but again without the provisions regarding the Washington Justice Commission and REISs. It remained in the Rules Committee.

House Bill 2076 (Information Concerning Racial Disproportionality) was referred to the House Committee on State Government. The bill, which died in committee without a hearing, would have required the CFC, in conjunction with multiple other groups, to establish a procedure for the provision of REISs. Additionally, it would have required the CFC to provide a REIS on any legislative proposal at the request of any legislator.

Senate Bill 5752 (Information Concerning Racial Disproportionality), the companion bill to HB 2076, was referred to the Senate Committee on Government Operations & Security, where it passed and was referred to the Senate Committee on Ways & Means. The bill would have required the CFC, in conjunction with multiple other groups, to establish a procedure for the provision of REISs. Additionally, it would have required the CFC to provide a REIS on any legislative proposal at the request of any legislator.

Substitute Senate Bill 5752 was substituted and passed the Senate Committee on Ways & Means. The bill, which was referred to and remained in the Rules Committee, would have required the CFC, in conjunction with numerous other groups, to develop recommendations for procedures and tools which will enable them to provide cost-effective REISs to legislative bills affecting criminal justice, human services, and education caseloads forecasted by the CFC. This

work would culminate with the CFC submitting a report outlining the recommendations by December 31, 2015.

REIS language was included in SB 5755 (Addressing and Mitigating the Impacts of Property Crimes in Washington State), the companion bill to HB 1885, which was referred to the Senate Committee on Law & Justice. The bill would create the Washington Justice Commission, one duty of which would be, upon request from the Legislature, to prepare REISs for proposed legislation that would impact the criminal offender population or recipients of human services.

Substitute Senate Bill 5755 was substituted and passed the Senate Committee on Law & Justice. It was then referred to the Senate Committee on Ways & Means. The bill would bring back the Sentencing Guidelines Commission as a state agency, one duty of which would be to, upon request from the Legislature, prepare REISs for proposed legislation that would impact the criminal offender population or recipients of human services.

Second Substitute Senate Bill 5755 was substituted and passed the Senate Committee on Ways & Means. It was referred to the Rules Committee, where it was placed on Second Reading. Rules were suspended and it was placed on Third Reading, whereby it passed out of the Senate on a vote of 40-9. Second Substitute Senate Bill 5755 was referred to the House Committee on Public Safety. The bill, which remained in committee, would co-locate the Sentencing Guidelines Commission (SGC) with the CFC and require the SGC, in conjunction with the CFC and upon request of the Legislature, to prepare REISs for proposed legislation that would impact the criminal offender population or recipients of human services.

REIS language was included in SB 6143 (The Sentencing of Offenders), which was referred to the Senate Committee on Law & Justice in the Third Special Session. The bill, which remained in committee, would collocate the SGC with the CFC and require the SGC, in conjunction with the CFC and upon request of the Legislature, to prepare REISs for proposed legislation that would impact the criminal offender population or recipients of human services.

During the 2016 Legislative Session, HB 2076 (Information Concerning Racial Disproportionality) was referred to the House Committee on State Government. The bill would have required the CFC, in conjunction with multiple other groups, to establish a procedure for the provision of REISs. Additionally, it would have required the CFC to provide a REIS on any legislative proposal at the request of any legislator.

Substitute House Bill 2076 was substituted and passed the House Committee on State Government. It was then referred to the House Committee on General Government & Information Technology. The bill, which passed and remained in the Rules Committee, would have required the CFC, in conjunction with other groups, to establish a plan for the provision of REISs. Additionally, it would have required the CFC to provide a REIS on any legislative proposal at the request of any legislator, if the data is currently available and sufficient. Criminal and juvenile justice REISs were to begin December 1, 2016.

REIS language was included in SB 6641 (Addressing and Mitigating the Impacts of Property Crimes in Washington State), which was referred to the Senate Committee on Law &

Justice. The bill, which remained in committee without a vote, would co-locate the SGC with the CFC and require the SGC, in conjunction with the CFC and upon request of the Legislature, to prepare REISs for proposed legislation that would impact the criminal offender population or recipients of human services.

The language in SSB 5752, from the 2015 legislative session that remained in the Rules committee for the 2016 legislative session, was inserted as a proviso into the 2016 Supplemental Operating Budget and serves as the basis for this report.

**Appendix F. 43.20.285. Health impact reviews—Obtaining and allocating federal or private funding to implement chapter.**

The state board shall, to the extent that funds are available expressly for this purpose, complete health impact reviews, in collaboration with the council, and with assistance that shall be provided by any state agency of which the board makes a request.

(1) A health impact review may be initiated by a written request submitted according to forms and procedures proposed by the council and approved by the state board before December 1, 2006.

(2) Any state legislator or the governor may request a review of any proposal for a state legislative or budgetary change. Upon receiving a request for a health impact review from the governor or a member of the legislature during a legislative session, the state board shall deliver the health impact review to the requesting party in no more than ten days.

(3) The state board may limit the number of health impact reviews it produces to retain quality while operating within its available resources.

(4) A state agency may decline a request to provide assistance if complying with the request would not be feasible while operating within its available resources.

(5) Upon delivery of the review to the requesting party, it shall be a public document, and shall be available on the state board's web site.

(6) The review shall be based on the best available empirical information and professional assumptions available to the state board within the time required for completing the review. The review should consider direct impacts on health disparities as well as changes in the social determinants of health.

(7) The state board and the department shall collaborate to obtain any federal or private funding that may become available to implement the state board's duties under this chapter. If the department receives such funding, the department shall allocate it to the state board and affected agencies to implement its duties under this chapter, and any state general funds that may have been appropriated but are no longer needed by the state board shall lapse to the state general fund.

[ [2006 c 239 § 5.](#) ]

## **Appendix G. Acronyms**

ACES – Automated Client Eligibility System, used by both ESA and HCA

ACT – JR’s Automated Client Tracking System

AFH – Adult Family Homes

AL – Assisted Living

ALTSA – Aging and Long Term Services Administration

AP – Agency Provider

ARC – Adult Residential Care

CEDARS – Comprehensive Education Data and Research System

DDA – Developmental Disabilities Administration

DOC – Department of Corrections

DEL – Department of Early Learning

DMS – DEL’s ESIT Data Management System

DSHS – Department of Social and Health Services

ELMS – Early Learning Management System used by DEL

ESA – Economic Services Administration

ESIT – Early Support for Infant and Toddlers

Famlink/SACWIS – State Automated Child Welfare Information System

IP – Individual Provider

MDS – Minimum Data Set (for DSHS Nursing Homes)

OMNI – Offender Management Network Information System used by DOC

OPR – Office of Program Research, House of Representatives

OSPI – Office of the Superintendent of Public Instruction

J&S – Judgement and Sentencing Form

JR – Juvenile Rehabilitation

RDA – Research and Data Analysis

SACWIS – Statewide Automated Child Welfare Information System

SGC – Sentencing Guidelines Commission

TANF – Temporary Assistance for Needy Families

WCAP – Washington Connections Automated Program for a subsection of WCCC caseload

WCCC - Working Connections Child Care

WSAC – Washington Student Achievement Council

WSIPP – Washington State Institute for Public Policy