To Recommendation Committee, RCJTF
From: Bob Boruchowitz and Jamie Crandall
Re: Discussion drafts of potential Racial Impact Statement legislative language
August 22, 2011

We submit for your consideration and our discussion a draft of a potential racial impact statement bill for submission to the Washington State Legislature. The framework of the bill is modeled after Washington’s Fiscal Note statute, RCW 43.88A. Where appropriate, endnotes provide the original language of other state statutes that were used for sample purposes. We look forward to discussing it.

New Section: RCW 43.88E - “Legislative Racial Impact Statements”

NEW SECTION. Sec. 1. A new section is added to chapter 43.88 RCW to read as follows:

1) The Legislature hereby recognizes the necessity of developing a uniform and coordinated procedure for determining the expected impact of bills and resolutions by the state government on the racial and ethnic composition of the criminal and juvenile justice systems.

NEW SECTION. Sec. 2. A new section is added to chapter 43.88 RCW to read as follows:

1) A racial and ethnic impact statement must be prepared for any legislation that may, if enacted, affect the racial and ethnic composition of the criminal or juvenile justice systems. For the purposes of this section, the juvenile justice system includes all matters heard in juvenile court as defined in chapter 13.04.030 RCW, and all juvenile court matters related to compulsory school attendance as described in chapter 28A.225 RCW.

2) The Washington State Institute for Public Policy shall, in cooperation with the appropriate legislative committees and legislative staff, establish a procedure for the provision of impact statements regarding proposed bills, resolutions, and amendments which affect the racial and ethnic composition of the criminal and juvenile justice systems. Such statements shall include but not be limited to an assessment of whether the proposed legislation would have a racially or ethically disparate effect on the composition of the state and local correctional facility population and an explanation of that impact. The statement shall include information concerning the estimated number of cases per year that the legislation will affect; the fiscal impact of prosecuting and confining persons pursuant to the legislation; the impact of the legislation on racial and ethnic minorities; the impact of the legislation upon law enforcement, courts,
prosecutor’s offices, public defenders, existing correctional institutions, community-based correctional facilities and services, and jails; the likelihood that the legislation may create a need for additional prison, jail, or detention facility capacity; and other relevant matters. The statement shall be factual, and shall provide a reasonable estimate of both the immediate effect and the long-range impact upon prison capacity.\[^{iv}\]

Prior to a hearing concerning a bill, resolution, or amendment, the legislative committee shall include in its report whether a racial and ethnic impact statement is or is not required.\[^{v}\] When such a statement is deemed necessary, the WSIPP shall provide the statement prior to the committee vote on the bill.

3) The Washington State Institute for Public Policy shall also provide a racial and ethnic impact statement on any legislative proposal at the request of any legislator. Such a statement shall be returned to the requesting legislator, and copies filed with the appropriate legislative committees pursuant to SECTION 2(5) below as soon as reasonably possible.

4) When a racial and ethnic impact statement is prepared and approved as to form, accuracy, and completeness by the Washington State Institute for Public Policy, copies shall be immediately filed with the chairperson of the committee to which the bill, resolution, or amendment was referred upon introduction in the house of origin. When such a statement has been prepared for a bill, resolution, or amendment, a copy of the statement shall be attached to the legislation and shall remain attached throughout the legislative process insofar as possible.\[^{vi}\]

\[^{i}\] The framework of this section and the section below were modeled after RCW 43.88A.10 through 43.88A.900

\[^{ii}\] Participating states have chosen different terms for such a statement. Iowa Code § 2.56 refers to correctional impact statements and minority impact statements. CT. Pub. Act. No. 08-143 labels such information as racial and ethnic impact statements.

\[^{iii}\] RCW 43.88A.020: “The office of financial management shall, in cooperation with appropriate legislative committees and legislative staff, establish a procedure for the provision of fiscal notes on the expected impact of bills and resolutions which increase or decrease or tend to increase or decrease state government revenues or expenditures. Such fiscal notes shall indicate by fiscal year the impact for the remainder of the biennium in which the bill or resolution will first take effect as well as a cumulative forecast of the fiscal impact for the succeeding four fiscal years. Fiscal notes shall separately identify the fiscal impacts on the operating and capital budgets. Estimates of fiscal impacts shall be calculated using the procedures contained in the fiscal note instructions issued by the office of financial management.”
Iowa Code § 2.56(1): “Prior to debate on the floor of a chamber of the general assembly, a correctional impact statement shall be attached to any bill, joint resolution, or amendment which proposes a change in the law which creates a public offense, significantly changes an existing public offense or the penalty for an existing offense, or changes existing sentencing, parole, or probation procedures. The statement shall include information concerning the estimated number of criminal cases per year that the legislation will impact, the fiscal impact of confining persons pursuant to the legislation, the impact of the legislation on minorities, the impact of the legislation upon existing correctional institutions, community-based correctional facilities and services, and jails, the likelihood that the legislation may create a need for additional prison capacity, and other relevant matters. The statement shall be factual and shall, if possible, provide a reasonable estimate of both the immediate effect and the long-range impact upon prison capacity.”

This language is adapted from Iowa Code § 2.56(2)(a) requiring, “[w]hen a committee of the general assembly reports a bill, joint resolution, or amendment to the floor, the committee shall state in the report whether a correctional impact statement is or is not required.”

Modified from RCW 43.88A.030(3).