

# SENATE BILL REPORT

## ESSB 5588

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As Passed Senate, February 10, 2018

**Title:** An act relating to information concerning racial disproportionality.

**Brief Description:** Developing information concerning racial disproportionality.

**Sponsors:** Senate Committee on Ways & Means (originally sponsored by Senators Hasegawa, Saldaña, Chase, Darneille, Schoesler, McCoy, Hobbs, Pedersen, Keiser, Hunt, Rolfes, Kuderer, Conway and Frockt).

**Brief History:**

**Committee Activity:** Ways & Means: 2/22/17, 2/24/17 [DPS].

**Floor Activity:**

Passed Senate: 2/10/18, 46-1.

**Brief Summary of Engrossed First Substitute Bill**

- Directs the Caseload Forecast Council (CFC) to submit to the Legislature a general disproportionality report prior to each legislative session.
- Directs the CFC to establish a procedure for the provision of racial and ethnic impact statements to accompany fiscal notes on the effect legislation modifying adult felony sentencing will have on racial and ethnic minority groups.
- Directs the Joint Legislative Audit and Review Committee, in consultation with other state entities, to evaluate the act and submit a report to the Legislature by December 1, 2020.

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**SENATE COMMITTEE ON WAYS & MEANS**

**Majority Report:** That Substitute Senate Bill No. 5588 be substituted therefor, and the substitute bill do pass.

Signed by Senators Braun, Chair; Brown, Vice Chair; Rossi, Vice Chair; Honeyford, Vice Chair, Capital Budget; Ranker, Ranking Minority Member; Rolfes, Assistant Ranking Minority Member, Operating Budget; Frockt, Assistant Ranking Minority Member, Capital Budget; Bailey, Becker, Billig, Conway, Darneille, Fain, Hasegawa, Keiser, Miloscia, Pedersen, Rivers, Schoesler, Warnick and Zeiger.

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

**Staff:** Julie Murray (786-7711)

**Background:** Fiscal note estimates of the fiscal impact of proposed legislation are prepared by the executive branch for use during the legislative process. For legislation that has a fiscal impact on state agencies, fiscal notes are prepared under a process coordinated by the Office of Financial Management (OFM). Pursuant to instructions issued by OFM, affected agencies estimate the bill's impacts on state revenues and expenditures and work with OFM to produce the fiscal note. For legislation that affects counties, cities, and other units of local government, the Department of Commerce produces local government fiscal notes, which are also subject to coordination by OFM.

The CFC prepares and submits state caseload forecasts at least three times a year that facilitate the development of budget proposals by the governor and the Legislature. The caseload forecasts include the number of persons expected to receive state entitlements and public services.

Racial and ethnic impact statements (REISs) provide a statistical analysis of the projected impact of proposed legislation on racial or ethnic minority populations. The 2016 supplemental operating budget directed the CFC to report to the Governor and the Legislature on recommendations for procedures and tools for providing cost-effective REISs for those forecasts produced by the CFC in the areas of criminal justice, human services, and education. The CFC reviewed four states that have implemented full REISs—Iowa, Minnesota, Connecticut and Oregon—as well as proposals in other states. The CFC recommended an incremental approach to the production of REISs starting with a criminal justice pilot project before expanding REISs to other program areas.

**Summary of Engrossed First Substitute Bill:** The CFC shall prepare and submit to the Legislature a general disproportionality report prior to each legislative session. The general disproportionality report must contain specific information such as a table of percentages based on the total number of adult felony sentences in each crime category, distributed by race and ethnicity.

The CFC must establish a procedure for the provision of REISs on the effect that legislative bills and resolutions modifying adult felony sentencing will have on racial and ethnic minority groups including, but not limited to, the racial and ethnic composition of the criminal justice system. REISs must be included with any fiscal note produced by the CFC on any legislative bill or resolution modifying adult felony sentencing. The CFC may request information, data, and assistance from state agencies to accomplish this duty without charge.

The Joint Legislative Audit and Review Committee, in consultation with the Minority and Justice Commission, the Sentencing Guidelines Commission, and the Washington Institute of Public Policy, shall conduct an evaluation of this act and submit a report to the appropriate committees of the Legislature by December 1, 2020.

Each of these activities are subject to availability of amounts appropriated for these specific purposes.

**Appropriation:** None.

**Fiscal Note:** Available.

**Creates Committee/Commission/Task Force that includes Legislative members:** No.

**Effective Date:** Ninety days after adjournment of session in which bill is passed.

**Staff Summary of Public Testimony on First Substitute:** *Testimony from 2017 Regular Session.* PRO: The CFC did the work required in the budget proviso and came back with a set of recommendations, which the underlying bill tried to call out. Looking at the fiscal note, I think the fiscal statement is odd to me. The CFC needs 1.5 FTE, which seems reasonable, OSPI needed 0.5 FTE, or depending on volume they may be able to do this within existing resources. DSHS says they need 3.0 FTE and DOC has requested 1.5 FTE. If OSPI can get it done at such a low level, I think DSHS and DOC should be able to as well. We appreciate that the bill has moved forward and got a hearing. There is a legal concept called facially neutral and disparate impact. We run into that in legislation where on the face of the bill it looks neutral, but we don't know who will be impacted. That is why the analysis is so important when considering any legislation. The information will be of great value. We would like it to be more expansive, but criminal justice is a good start. Costs appear to be overstated.

**Persons Testifying:** PRO: Senator Bob Hasegawa, Prime Sponsor; Bob Cooper, WA Defender Assoc & WA Assoc of Criminal Defense Lawyers.

**Persons Signed In To Testify But Not Testifying:** No one.