

## Partnership for Safety and Justice

### Comments regarding “IP 44 Racial and Ethnic Impact Statement” of the Oregon Criminal Justice Commission (undated document labelled “Preliminary Discussion Draft”)

Prepared by Andy Ko, Executive Director  
Submitted to the Oregon Secretary of State, July 23, 2020

Thank you for the opportunity to provide the comments of Partnership for Safety and Justice regarding the draft Racial and Ethnic Impact Statement prepared by the Criminal Justice Commission for *The Drug Addiction Treatment and Recovery Act of 2020* (IP44).

Partnership for Safety and Justice (PSJ) is Oregon’s leading voice for public safety and criminal justice reform. Since 1999, our purpose has been to effectively transform the criminal justice system by bringing together people who are justice involved, crime survivors, and the families and communities of both. As PSJ’s executive director, I personally have over three decades of professional experience in legal and policy advocacy relating to homelessness, drug policy and criminal justice reform.

#### Correcting titles of the Racial and Ethnic Impact Statement documents

As an initial matter, the two documents available for review on the Secretary of State’s (SOS) online announcement of the hearing and comment process need to be correctly retitled and dated.

Oregon state law requires that “A racial and ethnic impact statement must be impartial, simple and understandable and must include ... A statement of the methodologies and assumptions used in preparing the estimate ... ” among other specified requirements. ORS 137.683(3).

The SOS website properly summarizes these requirements,<sup>1</sup> and labels the electronic file copies of the two documents accurately.<sup>2</sup> However, the Criminal Justice Commission documents themselves are incorrectly titled, which will cause confusion and possible misuse of the documents themselves.

The shorter document, currently titled “Preliminary Discussion Draft November 3, 2020 General Election Initiative Petition #44” is the “simple and understandable” impact statement required by Oregon law. It should be clearly labeled and dated as such – e.g., “IP 44 Racial and Ethnic Impact Statement of the Oregon Criminal Justice Commission.”

---

<sup>1</sup> “The CJC is responsible for preparing an impartial, simple and understandable statement explaining the racial and ethnic impact.” <https://sos.oregon.gov/elections/Pages/cj-commission.aspx>

<sup>2</sup> “IP 44 - Racial and Ethnic Impact Statement” and “IP 44 - Racial and Ethnic Impact Analysis,”

The longer of the two documents for review, dated July 16, 2020, currently titled “IP 44 Racial and Ethnic Impact Statement” and dated July 16, 2020, does not meet statutory requirement for racial and ethnic impact statements, which must be “simple and understandable.” This document is technical to the point of nearly complete opacity. Given that this document is both noncompliant with the statute and more likely to confuse rather than inform most voters, it should be properly relabeled to indicate that it is a technical description of the CJC’s underlying analysis and not the impact statement itself.

This is not a minor point. These documents will be used and potentially misused by opposing sides to misinform or confuse Oregon voters about IP44. It is essential that the two documents be easily and correctly identifiable – especially the final draft of the primary document: the “simple and understandable” impact statement required by Oregon law.

Comments Regarding the Impact Statement (currently undated and labelled “Preliminary Discussion Draft”)

We have reviewed the comments submitted by IP44 chief petitioners Anthony Johnson, Haven Wheelock and Janie Gullickson, and overall agree and adopt their comments and recommendations. Additionally:

- The description of the subject matter of IP44 needs to be fully and accurately stated at the beginning of the impact statement. A full and accurate description is essential, even if the scope of the CJC’s analysis does not touch on all elements of IP44. Omission of this information in the description would misinform voters about the ballot initiative itself.

**Our recommendation is that the CJC work with the IP44 campaign staff to draft a concise but complete description of the core provisions of the ballot measure.**

- We agree with the petitioners that the CJC’s analysis of the racial and ethnic impact is not complete under ORS 137.683 if limited just to convictions. The CJC’s statement should also determine the racial and ethnic impacts of IP44 on:
  - police stops,
  - arrests,
  - pretrial jail detentions,
  - probationary dispositions,
  - jail and prison sentences,
  - remands to jail or prison for violations of early release provisions (whether the underlying offense, the violation or both are related to IP44),
  - impacts on immigration status, and
  - the growth of individual criminal records due to offenses affected by IP44 and how that might affect sentences in a subsequent case.

We understand that some data might not be available for racial and ethnic impact, but the scope of CJC’s inquiry and report nevertheless should not exclude these areas of analysis. That would result in an incomplete and potentially misleading impact statement. These situations should be flagged and, where needed data is not available, that should be stated.

### Crime Victims and the Statutory Requirement of Impartiality

PSJ views inclusion of crime victim voices and needs in all efforts to reform the criminal justice and public safety systems as essential. But we strongly recommend a major revision of the last paragraph of the “Preliminary Discussion Draft” and the elimination of irrelevant and misleading data that the CJC has included regarding purported “victims” of drug possession offenses.

Understandably, CJC is attempting here to meet the requirement that impact statements provide and “estimate of the racial and ethnic composition of the crime victims who may be affected by the proposed legislation.” ORS 137.683(3)(d). But, the CJC’s own explanation of its analysis indicates that this data does not exist or cannot be segregated from other drug offenses that are not affected by IP44.<sup>3</sup>

Possibly more problematic is the use of “society/public” as a proxy for distinct victims of drug offenses. This is misleading messaging that proponents of “The War on Drugs” have used for the past half-century to manipulate data, increase the criminalize drug users, and divert resources away from essential services. Messaging to support punitive drug policies has also raised barriers to ensuring that the needs of true crime victims are met.

The statutory requirement of impartiality in race and ethnic impact statements must include not using misleading data. We recommend that the current last paragraph of the “Preliminary Discussion Draft” remove specific references to unreliable data and revise the paragraph to read:

While data is available to estimate the possible effect of IP44 on individuals convicted of PCS, data concerning victims of individuals convicted of drug possession is not available. The Oregon Uniform Crime Reporting Program does report drug related crimes but does not report possession cases affected by IP44 separately or offer information on the race/ethnicity of a victim in any reported drug cases.

---

<sup>3</sup> “Finally, this statement is required to show an estimate of the racial and ethnic composition of the crime victims who may be affected by the state measure. **Unfortunately, a comprehensive data source on victims of individuals convicted of drug possession crimes is not available.** The Uniform Crime Reporting (UCR) Program housed at Oregon State Police collects data on reported crime from law enforcement agencies in the state. The UCR Program recently released the Oregon Crime Data Dashboards<sup>3</sup>, which displays crimes reported to law enforcement from January to May 2020. The dashboard provides summary level data on a publicly available website that can be filtered by several variables. Under the Victims Dashboard, the data can be filtered by drug/narcotic offenses. **This is more broadly defined than drug possession offenses, but is used here for example purposes.** From January to May 2020, 4,796 distinct victims are displayed. **The victim type for all offenses is displayed as society/public.** The victim demographics that would be displayed by **age, sex, and race are not available for this crime type.**” <https://sos.oregon.gov/elections/Documents/IP44-Racial-and-Ethnic-Impact-Analysis.pdf> at 2 (dated July 16, 2020).

