

## The Prosecutorial Transparency Act

### Section 1 – Legislative Findings and Intent

The Legislature finds and declares the following:

The [prosecutors' offices] in this state, which receive taxpayer funding from and are subject to oversight by this Legislature, are the most powerful actors in the criminal justice system. Among other things, [prosecutors' offices] decide whether to charge people, and with what crimes. They determine, virtually unilaterally, whether individuals will be diverted from the criminal system, thereby avoiding criminal records and attendant collateral consequences. They also make influential recommendations regarding pretrial detention, bail, and sentencing. These decisions and more have a lasting impact on people accused of crime, victims, families, communities, and [state's] economy. Yet basic information and data about these offices and their practices, while nominally publicly available, are exceedingly difficult to access and understand.

All individuals, including voters who determine which prosecutors should hold elected office and taxpayers who fund these offices, deserve unfettered access to this information in a way they can understand and use, unless protected by a recognized privilege or statutory or common law exemption. In addition to educating voters, the information this act requires [prosecutors' offices] to disclose will help identify the drivers of mass incarceration and racial disparities in our criminal justice system. The information will improve accountability for offices that violate the law and individuals' rights. It will help produce fairer outcomes in individual criminal cases, including via better-informed plea negotiations. And it will hasten improvements in prosecutors' offices themselves, creating management efficiencies and cost savings. The Legislature intends these and other salutary results of increased prosecutorial transparency.

In sum, the Legislature finds that it is a compelling state interest to implement uniform information transparency requirements for [prosecutors' offices] around the state, and that the public has a right to know such information. Accordingly, the Legislature enacts the Prosecutorial Transparency Act of [year].

### Section 2 – Definitions

For purposes of this Act, the following definitions shall apply:

- A) "Unique Identifier" means a randomly generated number that is assigned in place of a defendant's name;
- B) "Case number" means the unique number assigned to a criminal case associated with a particular criminal charge.

B) “Charge” means any accusation of a crime by the [prosecutor’s office],<sup>1</sup> including but not limited to an ordinance, citation, summary, misdemeanor, felony, or other type of crime, and including but not limited to accusations brought by ticket, citation, information, complaint, indictment, or other charging instrument.

C) “Charge description” means the name of the charge as given by the criminal code; a statement of the conduct that is alleged to have been violated; the associated statutory section establishing such conduct as criminal; the misdemeanor, felony, or other classification of the charge; and any level or tier within the misdemeanor, felony, or other classification.

D) “Charge ID” means the unique identification number assigned to a charge.

E) “Charge modifier” means any aggravating or mitigating circumstance of an alleged charge that enhances, reduces, or reclassifies it to a different classification grade or level.

F) “Disposition” means the conclusion of the prosecution of any charge, including but not limited to nolle prosequi, diversion, dismissal, dismissal as part of plea bargain, conviction as part of plea bargain, conviction at trial, acquittal, or any other means.

G) “Initiation” means the creation or institution of a charge against a criminal defendant, whether by police, prosecutors, grand jury, or other entity.

H) “Policy” means any policy, procedure, guideline, manual, training material, direction, instruction or other piece of information, whether formal or informal and whether or not in writing, that contains any guidance whatsoever for employees of the [prosecutor’s office].

### **Section 3 – Information to be Collected, Maintained, and Disclosed**

A) Except as provided in this Section and in accordance with local and state laws, a [prosecutor’s office] shall collect and disclose the following data for each case prosecuted by such office, and maintain a record all information collected for at least 10 years:

- 1) Case number;
- 2) Indictment number;
- 3) Docket number;
- 4) Unique identifier;
- 5) Defendant race;
- 6) Defendant gender;
- 7) Defendant disability status, if any;
  - a. Mental disability (psychiatric, developmental, intellectual),
  - b. Physical disability (mobility, other),

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<sup>1</sup> Choose identifier consistent with state designation, e.g., “District Attorney’s Office,” “County Attorney’s Office,” “Prosecuting Attorney Office,” “State’s Attorney’s Office,” etc.

- c. Sensory disability (vision, hearing, other)
- 8) Source of information in subsection 3(A)(7) above:
  - a. Defendant's advocate or attorney,
  - b. Observation by DA,
  - c. Other
- 9) Incident date;
- 10) Arrest date;
- 11) District or neighborhood of arrest;
- 12) Primary arresting agency;
- 13) Other agencies involved in arrest;
- 14) Charges listed on arresting agency paperwork;
- 15) If [prosecutor] declines to prosecute the arrest, reason;
- 16) Charges brought by the [prosecutor];
- 17) Prosecutor who approved each charge;
- 18) Whether defendant was deemed eligible for court-appointed counsel, and name of the proceeding (e.g. arraignment, first appearance) where such determination was made;
- 19) Arraignment date;
- 20) Charge modification date(s);
- 21) Charge following modification;
- 22) Whether diversion was offered;
- 23) Date diversion was offered;
- 24) Judicial position on diversion, if any was stated on the record;
- 25) If diversion was offered, whether accepted by defendant;
- 26) Diversion terms, including how much defendant must pay (if anything);
- 27) Whether the charge carried a mandatory minimum sentence;
- 28) Whether the charge carried was death-penalty eligible;
- 29) Prosecutor's recommendation on bail or bond, including release conditions;
- 30) Whether bail or bond was imposed on the defendant;
- 31) Whether bond was secured, unsecured, or other type;
- 32) Date bail or bond imposed;
- 33) Release conditions, if ordered;

- 34) Date range(s) of any pretrial detention;
- 35) Whether a risk assessment or other algorithm-based or quantitative tool was used in determining whether pretrial detention was ordered and/or the amount of bail or bond;
- a. Name of the office or agency that conducted the risk assessment,
  - b. Name of offices, agencies, individuals, or attorneys that received the risk assessment results
- 36) Whether any statutory or constitutional rights of defendants were waived, either by stipulation or on the record;
- a. The dates of such waiver,
  - b. The rights waived,
  - c. Whether and which rights were waived as a condition of a plea bargain
- 37) Whether a plea was offered;
- 38) Whether a time limit was provided with a plea offer;
- 39) All terms of all pleas offered, including, but not limited to:
- a. Charges dismissed,
  - b. Sentence ranges for charges dismissed,
  - c. Charges in the plea,
  - d. Sentence ranges for charges in the plea,
  - e. Any charges “covered by” the plea but not part of the conviction,
  - f. Penalties [or sentence] offered for taking plea, if any
- 40) Whether plea was accepted or rejected;
- 41) Whether discovery was offered to defendant before the plea;
- 42) Date discovery disclosed to defense or defendant;
- 43) Presiding judge(s) at pretrial stage;
- 44) Disposition, including:
- a. Case or charges dropped by [prosecutor] [or dismissed on motion of [prosecutor], and reason for dismissal,
  - b. All charges defendant was convicted of, if any,
  - c. If convicted, whether by plea, jury trial, or bench trial,
  - d. If case was dismissed by judge, reason for dismissal
- 45) Presiding judge at disposition;
- 46) Disposition date;

- 47) Sentence type (prison, probation, etc.);
- 48) Sentence length;
- 49) Presiding judge at sentencing;
- 50) Supervision terms;
- 51) Services required or provided, if any;
- 52) Fines, fees or surcharges required, if any;
- 53) Forfeiture of property required, if any.

B) The [prosecutor's office] shall collect and publish all office policies including, but not limited to, those listed in this subsection. If the [prosecutor's office] does not maintain a policy related to any of the topics listed in this subsection, the [prosecutor's office] shall affirmatively disclose that fact.

- 1) Charge dismissal and charging;
- 2) Bail;
- 3) Sentencing;
- 4) Plea bargains;
- 5) Grand jury practices;
- 6) Discovery practices;
- 7) Witness treatment, including when and how to procure material witness warrant;
- 8) How a decision is made to prosecute [juvenile/youth] as adult;
- 9) How fines and fees are assessed;
- 10) Criminal and civil forfeiture practices;
- 11) Mental Health Screening/Collect Mental Health History;
- 12) Substance Abuse Screening/History;
- 13) Domestic violence survivors;
- 14) Diversion policies and practices;
- 15) Human resources, including but limited to hiring, evaluation, firing, promotion, and rotation among divisions or units;
- 16) Internal discipline policies and procedures;
- 17) Victim Services;
- 18) Restorative Justice Programs;
- 19) List of office trainings in the last year;
- 20) Practices involving tracking and responding to prison inmates' applications for parole or resentencing;

21) Policies specific to vulnerable populations like immigrants, LGBTQ, etc.

C) The [prosecutor's office] shall collect and publish the following information for every attorney employed in the office, with names and other personally identifying information redacted or replaced by an anonymizing identifier (e.g. "Attorney 1," "Attorney 2," etc.):

- 1) Age;
- 2) Gender;
- 3) Race;
- 4) Date hired;
- 5) Title;
- 6) Disciplinary history;

D) [Prosecutor's office] must collect and publish the following information:

- 1) Number of attorneys on staff;
- 2) Cases handled per year per attorney;
- 3) Number of attorneys who worked for the office in a temporary or contract capacity during the previous calendar year;
- 4) Number of paralegals and administrative staff employed by the office;
- 5) Number of investigators utilized during the previous calendar year;
- 6) Number of experts utilized during the previous calendar year, whether on staff or otherwise;
- 7) Number of police or detectives who work directly for the [prosecutor's office]

#### **Section 4 – Reporting Requirements**

A) Policies and Staffing Information

- 1) Beginning six months after the Effective Date of this Act, the [prosecutor's office] shall be making publicly available all the information in subsections 3(B)-(D) by posting them on the [prosecutor's office] website and making them readily publicly available to any person who requests them directly from the [prosecutor's office].
- 2) The information in subsections 3(B)-(D) must include the effective date of the policy or the date the information was gathered, and the [prosecutor's office] shall ensure that it posts revised, updated or newly drafted policies or newly collected information on a timely basis, and not less frequently than once each year.

B) Data Reporting to [State Agency] and [State Agency] Reports and Analysis

- 1) [State Agency] shall determine the manner in which data required in subsection 3(A) shall be transmitted by [prosecutor's office]. [State Agency] shall ensure such reporting is done in a uniform and consistent fashion.
- 2) [State Agency] shall determine an implementation schedule and plan by which all [prosecutors' offices] in the state shall be reporting all data under Section (3)(A) no later

than three years after the Effective Date of this Act. That plan may include, at the sole discretion of [State Agency], implementation on a rolling basis that starts by prioritizing a subset of the data in subsection 3(A) and/or starts by prioritizing reporting from larger offices.

- 3) In accordance with that plan, and beginning one year after the Effective Date of this Act, [prosecutor's office] shall begin transmitting data, stripped of any individualized or identifying personal information about any person arrested or prosecuted, to [State Agency] on or before January 31<sup>st</sup>, for the preceding calendar year.
- 4) Beginning one year after the Effective Date of this Act, on May 1 of each year [State Agency] shall begin publishing online the data collected under Section 3(A) in a modern, open, electronic format that is machine-readable, machine-searchable, and readily accessible to the public on the [State Agency] website. No published data shall contain individualized or identifying personal information about any person arrested or prosecuted.
- 5) Beginning one year after the Effective Date of this Act, on September 1 of each year, [State Agency] shall produce an annual report that analyzes the data received from all [prosecutors' offices], comparing and contrasting the practices and trends among and between [prosecutors' offices] in the state, and identifying any [prosecutors' offices] who are not in compliance with this Act.
- 6) [State Agency] shall also, from time-to-time, but not less frequently than twice per year, publish issue-specific reports that provide a deeper analysis of one or more areas of prosecutorial decision-making. At least one such report per year shall focus on racial disparities in a particular point(s) of prosecutorial decision-making.

## **Section 6 — Advisory Board**

No later than three months after the Effective Date of this Act, the Governor shall constitute and appoint members to an Advisory Board that shall meet from time-to-time, but no less than once per quarter, with the [State Agency] to provide input and guidance to [State Agency] on any and all draft rules, regulations, policies, plans, reports, or other decisions made by [State Agency] in regard to this Act. The Advisory Board shall be comprised of no fewer than seven members, who shall not be compensated, and shall include at least two members who are public defenders or criminal defense attorneys and two members who have direct experience being prosecuted in the state's criminal legal system.

## **Section 7 – Noncompliance**

Notwithstanding any other provision of law, where [State Agency] has made a determination that a [prosecutor's office] is not in compliance with this Act, that [prosecutor's office] shall be

ineligible to receive funding from the [state's general fund or other allocation] and any state grant program administered by the [Attorney General or other entity controlling grants to the prosecutor's office]. Funding shall be restored only after full compliance with the requirements of this Section, after the [prosecutor's office] provides the required information from the date of non-compliance through the current date, and upon a compliance review by [State Agency] and certification that the [prosecutor's office] is in compliance with this Act.

#### **Section 8 – Relation to [public records acts]**

A) If the [prosecutor's office] is in compliance with this Section and receives a request for information under [insert name of public records law] that the [prosecutor's office] reasonably and in good faith believes can be satisfied by reference to data made publicly available under this Section, the [prosecutor's office] may satisfy its obligation under [public records law] by referring the requesting party to the [State Agency] website containing the data. In such circumstance, the [prosecutor's office] need not collect and disclose the particular data requested.

B) If the requesting party does not believe that its request can be satisfied with data collected under this Section and published on the relevant website, the requesting party may file suit in accordance with the [public records law] to compel disclosure.

#### **Section 9 – Effective Date**

This legislation shall take effect on [MONTH], [DAY], [YEAR].

#### **Section 10 – Severability Clause**

If any provision of this Act, or the application thereof to any person or circumstance, is held invalid, the remainder of this Act and the application to other persons or circumstances shall not be affected thereby.