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By:  Dutton H.B. No. 3919

A BILL TO BE ENTITLED

AN ACT

relating to prosecutorial transparency.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1.  Subtitle C, Title 2, Government Code, is amended by adding Chapter 47 to read as follows:

CHAPTER 47. PROSECUTORIAL TRANSPARENCY

Sec. 47.0001.  DEFINITIONS. In this chapter:

(1)  "Case number" means the unique number assigned to a criminal case associated with a particular criminal charge.

(2)  "Charge" means any accusation of a crime by a prosecutor's office, including an ordinance, citation, summary, misdemeanor, felony, or other type of crime, and an accusation brought by ticket, citation, information, complaint, indictment, or other charging instrument.

(3)  "Disposition" means the conclusion of the prosecution of a charge, including an entry of nolle prosequi, diversion, dismissal, dismissal as part of plea bargain, conviction as part of plea bargain, conviction at trial, or acquittal.

(4)  "Policy" means any policy, procedure, guideline, manual, training material, direction, instruction, or other information, formal or informal, and written or unwritten, that contains guidance for employees of the prosecutor's office.

(5)  "Unique identifier" means a randomly generated number assigned in place of a defendant's name.

Sec. 47.0002.  INFORMATION COLLECTED, MAINTAINED, AND DISCLOSED. (a) Except as provided by this section, a prosecutor's office shall collect and disclose the following information for each case prosecuted by the office:

(1)  the case number;

(2)  the indictment number;

(3)  the docket number;

(4)  the unique identifier;

(5)  the defendant's race;

(6)  the defendant's gender;

(7)  the defendant's disability status, including, as applicable:

(A)  mental disability;

(B)  physical disability; or

(C)  sensory disability;

(8)  the source of the information in Subdivision (7), including, as applicable:

(A)  the defendant's advocate or attorney;

(B)  observation by defense attorney; or

(C)  another source;

(9)  the incident date;

(10)  the arrest date;

(11)  the district or neighborhood of the arrest;

(12)  the primary arresting agency;

(13)  other agencies involved in the arrest;

(14)  the charges listed on arresting agency paperwork;

(15)  if the prosecutor declines to prosecute the arrest, the reason for not prosecuting the alleged offense;

(16)  any charges brought by the prosecutor;

(17)  the prosecutor who approved each charge;

(18)  the defendant's eligibility for court-appointed counsel and the proceeding in which the determination was made;

(19)  the arraignment date;

(20)  the charge modification date;

(21)  the charge following modification;

(22)  whether diversion was offered;

(23)  the date diversion was offered;

(24)  the judge's position on diversion if stated on the record;

(25)  if diversion was offered, whether it was accepted by the defendant;

(26)  the diversion terms, including the amount of any fees, the defendant must pay;

(27)  whether the charge carried a mandatory minimum sentence;

(28)  whether the charge was death penalty-eligible;

(29)  the prosecutor's recommendation on amount of bail or bond, including release conditions;

(30)  whether bail or bond was imposed on the defendant;

(31)  whether bond was secured, unsecured, or another type of arrangement;

(32)  the date bail or bond was imposed;

(33)  any ordered release conditions;

(34)  the date range of any pretrial detention;

(35)  whether a risk assessment or other algorithm-based or quantitative tool was used in determining pretrial detention or the amount of bail or bond and, if so:

(A)  the name of the office or agency that conducted the risk assessment; and

(B)  the name of offices, agencies, individuals, or attorneys that received the risk assessment results;

(36)  whether any statutory or constitutional rights of defendants were waived by stipulation or in the court's record and, if so:

(A)  the dates of the waiver;

(B)  the rights waived; and

(C)  whether and which rights were waived as a condition of a plea bargain;

(37)  whether a plea was offered;

(38)  whether an acceptance time was included with a plea offer;

(39)  the terms of all pleas offered to the defendant, including:

(A)  any charges dismissed;

(B)  the sentence ranges for charges dismissed;

(C)  the charges in the plea;

(D)  the sentence ranges for charges in the plea;

(E)  any charges covered by the plea but not the conviction; and

(F)  any penalties or sentence offered for accepting the plea;

(40)  whether the plea was accepted or rejected;

(41)  whether discovery was offered to the defendant before the plea;

(42)  the date discovery was disclosed to the defense or defendant;

(43)  the presiding judges for pretrial proceedings;

(44)  the case's disposition, including:

(A)  whether the case or charges were dropped by the prosecutor or dismissed on the motion of the prosecutor and the reason for the dismissal;

(B)  the charges of which the defendant was convicted;

(C)  if the defendant was convicted, whether by plea, jury trial, or bench trial; and

(D)  if the case was dismissed by a judge, the reason for the dismissal;

(45)  the presiding judge at disposition;

(46)  the disposition date;

(47)  the sentence type;

(48)  the sentence length;

(49)  the presiding judge at sentencing;

(50)  the supervision terms;

(51)  any services required or provided to the defense or defendant;

(52)  any fines, fees, or surcharges imposed; and

(53)  any forfeiture of property required.

(b)  The prosecutor's office shall maintain a record of the information required by Subsection (a) for each case until at least the 10th anniversary of the date of the alleged offense that is the subject of the case.

(c)  The prosecutor's office shall collect and publish all office policies including the policies listed in this subsection. If the prosecutor's office does not maintain a policy related to any topics listed in this subsection, the prosecutor's office shall affirmatively disclose that fact. The policies may include:

(1)  charge dismissal and charging;

(2)  bail;

(3)  sentencing;

(4)  plea bargains;

(5)  grand jury practices;

(6)  discovery practices;

(7)  witness treatment, including the timing and procedures to procure material witness warrants;

(8)  the procedure for deciding whether to prosecute juveniles as adults;

(9)  the manner in which fines and fees are assessed;

(10)  criminal and civil forfeiture practices;

(11)  mental health screening and mental health history;

(12)  substance abuse screening and history;

(13)  domestic violence survivors;

(14)  diversion policies and practices;

(15)  human resources, including hiring, evaluation, firing, promotion, and rotation among divisions or units in the prosecutor's office;

(16)  internal discipline policies and procedures in the prosecutor's office;

(17)  victim services;

(18)  restorative justice programs;

(19)  office trainings offered in the prosecutor's office in the preceding year;

(20)  practices involving tracking and responding to prison inmates' applications for parole or resentencing; and

(21)  policies specific to vulnerable populations, including members of the immigrant, lesbian, gay, bisexual, transgender, or queer communities.

(d)  The prosecutor's office shall collect and publish the following information for each attorney employed in the office, redacting the names and other personally identifying information or otherwise ensuring the anonymity of each attorney:

(1)  age;

(2)  gender;

(3)  race;

(4)  date hired;

(5)  title; and

(6)  disciplinary history.

(e)  The prosecutor's office must collect and publish the following information:

(1)  the number of attorneys on staff;

(2)  the number of cases handled by an attorney each year;

(3)  the number of attorneys who worked for the office in a temporary or contract capacity during the preceding calendar year;

(4)  the number of paralegals and administrative staff employed by the office;

(5)  the number of investigators used during the preceding calendar year;

(6)  the number of experts, on staff or in another capacity, used during the preceding calendar year; and

(7)  the number of police or detectives who work directly for the prosecutor's office.

Sec. 47.0003.  PUBLIC POSTING REQUIREMENTS. (a) A prosecutor's office shall make publicly available the information required by Section 47.0002(c)-(e) by posting the information on the office's Internet website and making the information available on request.

(b)  The information made available under Subsection (a) must include the effective date of the policy or the date the information was gathered. The prosecutor's office shall ensure that the office posts revised or newly drafted policies or newly collected information in a timely manner, and not less frequently than annually.

Sec. 47.0004.  REPORT TO OFFICE OF COURT ADMINISTRATION. (a) A prosecutor's office shall report the information required under Section 47.0002(a) to the Office of Court Administration of the Texas Judicial System.

(b)  The Office of Court Administration of the Texas Judicial System shall:

(1)  determine the manner in which information required under Section 47.0002(a) is transmitted to the office by a prosecutor's office in a uniform and consistent fashion;

(2)  determine an implementation schedule and plan for all prosecutors' offices in the state to report the information required under Section 47.0002(a). That plan may include, at the sole discretion of the office, implementation on a rolling basis that starts by prioritizing a subset of the information or starts by prioritizing reporting from prosecutors' offices from counties with the largest population;

(3)  on May 1 of each year, publish on the office's Internet website the information collected under Section 47.0002(a) in an open electronic format that is machine-readable, machine-searchable, and readily accessible to the public, provided the information does not contain personally identifying information about any person arrested or prosecuted;

(4)  on September 1 of each year, produce an annual report that analyzes the information received from all prosecutors' offices, comparing and contrasting the practices and trends among prosecutors' offices in this state, and identifying any prosecutors' offices that are not in compliance with this chapter; and

(5)  biannually publish issue-specific reports that provide a deeper analysis of one or more areas of prosecutorial decision-making, with at least one report each year focusing on racial disparities in prosecutorial decision-making.

(c)  In accordance with the plan implemented under Subsections (b)(1) and (2), on or before January 31 of each year, a prosecutor's office shall transmit information that does not contain any personally identifying information about a person arrested or prosecuted to the Office of Court Administration of the Texas Judicial System for the preceding calendar year.

Sec. 47.0005.  ADVISORY BOARD. (a) A board is established to advise the Office of Court Administration of the Texas Judicial System under this chapter. The board shall meet at least quarterly with the office to provide comments and guidance to the office on any draft rules, policies, plans, reports, or other decisions made by the office related to this chapter.

(b)  The advisory board:

(1)  is composed of at least seven members, appointed by the governor; and

(2)  must include at least:

(A)  two members who are public defenders or criminal defense attorneys; and

(B)  two members who have direct experience being prosecuted in the state's criminal justice system.

(c)  An advisory board member is not entitled to compensation for service on the advisory board.

Sec. 47.0006.  NONCOMPLIANCE. Notwithstanding any other law, if the Office of Court Administration of the Texas Judicial System determines that a prosecutor's office is not in compliance with this chapter, the prosecutor's office is ineligible to receive funding from the state's general revenue fund or other fund or any state grant program administered by the attorney general or other entity controlling grants to the prosecutor's office, and the office shall inform the comptroller and the Legislative Budget Board of the ineligibility. Eligibility for funding may be restored only after:

(1)  the prosecutor's office fully complies with this chapter and provides the required information; and

(2)  the Office of Court Administration of the Texas Judicial System certifies that the prosecutor's office is in compliance with this chapter.

Sec. 47.0007.  RELATION TO PUBLIC RECORDS ACTS. (a) If the prosecutor's office is in compliance with this chapter and receives a request for information under Chapter 552 that the prosecutor's office reasonably and in good faith believes can be satisfied by reference to information publicly available under this chapter, the prosecutor's office may satisfy the obligation under Chapter 552 by referring the requesting party to the Internet website of the Office of Court Administration of the Texas Judicial System that contains the information and is not required to otherwise collect and disclose the requested information.

(b)  If the requesting party does not agree that the party's request can be satisfied with information collected and published under this chapter on the relevant website, the requesting party may file suit in accordance with Chapter 552 to compel disclosure.

SECTION 2.  (a) Not later than March 1, 2020, a prosecutor's office shall post on the prosecutor's office's Internet website the initial information required under Section 47.0002(c)-(e), Government Code, as added by this Act.

(b)  Not later than September 1, 2020, the Office of Court Administration of the Texas Judicial System shall make the initial determinations required under Sections 47.0004(b)(1) and (2), Government Code, as added by this Act.

(c)  Not later than May 1, 2021, the Office of Court Administration of the Texas Judicial System shall post on the office's Internet website the initial information required under Section 47.0004(b)(3), Government Code, as added by this Act.

(d)  Not later than September 1, 2021, the Office of Court Administration of the Texas Judicial System shall produce the initial reports required under Sections 47.0004(b)(4) and (5), Government Code, as added by this Act.

(e)  Not later than December 1, 2020, the governor shall make the initial appointments to the advisory board required under Section 47.0005, Government Code, as added by this Act.

SECTION 3.  This Act takes effect September 1, 2019.