

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.

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

5           (1) the case number;

6           (2) the indictment number;

7           (3) the docket number;

8           (4) the unique identifier;

9           (5) the defendant's race;

10          (6) the defendant's gender;

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

12 applicable:

13                   (A) mental disability;

14                   (B) physical disability; or

15                   (C) sensory disability;

16          (8) the source of the information in Subdivision (7),

17 including, as applicable:

18                   (A) the defendant's advocate or attorney;

19                   (B) observation by defense attorney; or

20                   (C) another source;

21          (9) the incident date;

22          (10) the arrest date;

23          (11) the district or neighborhood of the arrest;

24          (12) the primary arresting agency;

25          (13) other agencies involved in the arrest;

26          (14) the charges listed on arresting agency paperwork;

27          (15) if the prosecutor declines to prosecute the

- 1 arrest, the reason for not prosecuting the alleged offense;  
2 (16) any charges brought by the prosecutor;  
3 (17) the prosecutor who approved each charge;  
4 (18) the defendant's eligibility for court-appointed  
5 counsel and the proceeding in which the determination was made;  
6 (19) the arraignment date;  
7 (20) the charge modification date;  
8 (21) the charge following modification;  
9 (22) whether diversion was offered;  
10 (23) the date diversion was offered;  
11 (24) the judge's position on diversion if stated on the  
12 record;  
13 (25) if diversion was offered, whether it was accepted  
14 by the defendant;  
15 (26) the diversion terms, including the amount of any  
16 fees, the defendant must pay;  
17 (27) whether the charge carried a mandatory minimum  
18 sentence;  
19 (28) whether the charge was death penalty-eligible;  
20 (29) the prosecutor's recommendation on amount of bail  
21 or bond, including release conditions;  
22 (30) whether bail or bond was imposed on the  
23 defendant;  
24 (31) whether bond was secured, unsecured, or another  
25 type of arrangement;  
26 (32) the date bail or bond was imposed;  
27 (33) any ordered release conditions;

1           (34) the date range of any pretrial detention;

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

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

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

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

12                   (A) the dates of the waiver;

13                   (B) the rights waived; and

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

16           (37) whether a plea was offered;

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

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

21                   (A) any charges dismissed;

22                   (B) the sentence ranges for charges dismissed;

23                   (C) the charges in the plea;

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

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

27                   (F) any penalties or sentence offered for

1 accepting the plea;  
2           (40) whether the plea was accepted or rejected;  
3           (41) whether discovery was offered to the defendant  
4 before the plea;  
5           (42) the date discovery was disclosed to the defense  
6 or defendant;  
7           (43) the presiding judges for pretrial proceedings;  
8           (44) the case's disposition, including:  
9               (A) whether the case or charges were dropped by  
10 the prosecutor or dismissed on the motion of the prosecutor and the  
11 reason for the dismissal;  
12               (B) the charges of which the defendant was  
13 convicted;  
14               (C) if the defendant was convicted, whether by  
15 plea, jury trial, or bench trial; and  
16               (D) if the case was dismissed by a judge, the  
17 reason for the dismissal;  
18           (45) the presiding judge at disposition;  
19           (46) the disposition date;  
20           (47) the sentence type;  
21           (48) the sentence length;  
22           (49) the presiding judge at sentencing;  
23           (50) the supervision terms;  
24           (51) any services required or provided to the defense  
25 or defendant;  
26           (52) any fines, fees, or surcharges imposed; and  
27           (53) any forfeiture of property required.

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

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

- 10            (1) charge dismissal and charging;
- 11            (2) bail;
- 12            (3) sentencing;
- 13            (4) plea bargains;
- 14            (5) grand jury practices;
- 15            (6) discovery practices;
- 16            (7) witness treatment, including the timing and  
17 procedures to procure material witness warrants;
- 18            (8) the procedure for deciding whether to prosecute  
19 juveniles as adults;
- 20            (9) the manner in which fines and fees are assessed;
- 21            (10) criminal and civil forfeiture practices;
- 22            (11) mental health screening and mental health  
23 history;
- 24            (12) substance abuse screening and history;
- 25            (13) domestic violence survivors;
- 26            (14) diversion policies and practices;
- 27            (15) human resources, including hiring, evaluation,

1 firing, promotion, and rotation among divisions or units in the  
2 prosecutor's office;

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

5 (17) victim services;

6 (18) restorative justice programs;

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

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

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

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

18 (1) age;

19 (2) gender;

20 (3) race;

21 (4) date hired;

22 (5) title; and

23 (6) disciplinary history.

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

26 (1) the number of attorneys on staff;

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

1 year;

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

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

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

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

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

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

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

24 Sec. 47.0004. REPORT TO OFFICE OF COURT ADMINISTRATION.

25 (a) A prosecutor's office shall report the information required  
26 under Section 47.0002(a) to the Office of Court Administration of  
27 the Texas Judicial System.



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

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

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

13           (3) on May 1 of each year, publish on the office's  
14 Internet website the information collected under Section  
15 47.0002(a) in an open electronic format that is machine-readable,  
16 machine-searchable, and readily accessible to the public, provided  
17 the information does not contain personally identifying  
18 information about any person arrested or prosecuted;

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

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

1 racial disparities in prosecutorial decision-making.

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

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

14 (b) The advisory board:

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

17 (2) must include at least:

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

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

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

24 Sec. 47.0006. NONCOMPLIANCE. Notwithstanding any other  
25 law, if the Office of Court Administration of the Texas Judicial  
26 System determines that a prosecutor's office is not in compliance  
27 with this chapter, the prosecutor's office is ineligible to receive

1 funding from the state's general revenue fund or other fund or any  
2 state grant program administered by the attorney general or other  
3 entity controlling grants to the prosecutor's office, and the  
4 office shall inform the comptroller and the Legislative Budget  
5 Board of the ineligibility. Eligibility for funding may be  
6 restored only after:

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

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

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

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

26 SECTION 2. (a) Not later than March 1, 2020, a prosecutor's  
27 office shall post on the prosecutor's office's Internet website the

1 initial information required under Section 47.0002(c)-(e),  
2 Government Code, as added by this Act.

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

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

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

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

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