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By:  Dutton H.B. No. 970

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 charged offense.

(2)  "Charge" means an accusation by a prosecutor's office that an individual committed an offense, including a violation of an ordinance, an offense punishable by fine only, a misdemeanor, or a felony brought by ticket, citation, information, complaint, indictment, or other charging instrument.

(3)  "Disposition" means the action concluding 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)  "Office" means the Office of Court Administration of the Texas Judicial System.

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

(6)  "Prosecutor" means a district attorney, criminal district attorney, county attorney performing the duties of a district attorney, or municipal prosecutor.

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

Sec. 47.0002.  INFORMATION COLLECTED AND MAINTAINED BY PROSECUTOR'S OFFICE. (a) Except as provided by this section, a prosecutor's office shall collect the following information, as applicable, for each case presented to 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, the status of the defendant as having:

(A)  an intellectual disability;

(B)  a physical disability; or

(C)  a sensory disability;

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

(A)  the defendant's advocate or attorney;

(B)  observation by defense attorney; or

(C)  another source;

(9)  the date the offense was committed or incident occurred;

(10)  the arrest date;

(11)  the district, precinct, or neighborhood of the arrest;

(12)  the primary arresting law enforcement agency;

(13)  other governmental agencies involved in the arrest;

(14)  the charges listed on the arresting law enforcement agency's paperwork;

(15)  if the prosecutor declines to prosecute an alleged offense, the reason for that decision;

(16)  any charges filed by the prosecutor;

(17)  the name of the prosecutor who approved each filed charge;

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

(19)  the arraignment date;

(20)  the date the charge was modified;

(21)  the charge following any 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)  whether the defendant accepted any diversion offered;

(26)  the diversion terms, including the amount of any fees the defendant is ordered to pay;

(27)  whether the punishment for the offense prescribes a mandatory minimum sentence;

(28)  whether the offense charged was eligible for punishment by death sentence;

(29)  the prosecutor's recommendation on the 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 payable from another type of arrangement;

(32)  the date bail or bond was imposed;

(33)  any court-ordered release conditions;

(34)  the dates and length of any pretrial detention the defendant served;

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

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

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

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

(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 a time limit for acceptance 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 included in the plea;

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

(E)  any charges included in the plea but not included in the convicted offenses; and

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

(40)  whether the plea was accepted or rejected;

(41)  whether discovery was disclosed to the defense or defendant before the plea;

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

(43)  the judges presiding over pretrial proceedings;

(44)  the case's disposition, including:

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

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

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

(D)  if a judge dismisses the case, the reason for the dismissal;

(45)  the presiding judge at disposition;

(46)  the disposition date;

(47)  the sentence type, including fines, probation, suspended sentences, and incarceration;

(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, reimbursement fees, or court costs 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 the alleged offense for the case was committed.

(c)  The prosecutor's office shall collect all office policies, including policies related to the following:

(1)  case dismissal and charging of offenses;

(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, reimbursement fees, and court costs are assessed;

(10)  asset forfeiture practices;

(11)  mental health screening and history;

(12)  substance abuse screening and history;

(13)  domestic violence survivors;

(14)  diversion practices;

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

(16)  internal discipline and related procedures;

(17)  victim services;

(18)  restorative justice programs;

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

(20)  procedures for tracking and responding to incarcerated individuals' applications for parole or resentencing; and

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

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

(1)  age;

(2)  gender;

(3)  race;

(4)  date hired;

(5)  title; and

(6)  disciplinary history.

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

(1)  the number of attorneys on staff;

(2)  the average 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 who provided services to the office during the preceding calendar year;

(6)  the number of experts who provided services to the office during the preceding calendar year; and

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

Sec. 47.0003.  PUBLIC POSTING REQUIREMENTS FOR CERTAIN INFORMATION. (a) A prosecutor's office shall make publicly available the information required by Sections 47.0002(c)-(e) by:

(1)  posting the information on the office's Internet website; and

(2)  otherwise making the information available on request.

(b)  The information made available under Subsection (a) must include the effective date of each policy or the date the information was gathered. The prosecutor's office at least annually shall post revised or newly drafted policies or newly collected information.

(c)  A prosecutor's office that does not maintain a policy related to a topic listed in Section 47.0002(c) shall affirmatively disclose that fact.

Sec. 47.0004.  REPORT OF CERTAIN INFORMATION TO OFFICE. (a) The office shall:

(1)  establish a uniform and consistent method for a prosecutor's office to transmit the information required under Section 47.0002(a) to the office; and

(2)  develop an implementation schedule and plan for all prosecutors' offices in this state to report the information required under Section 47.0002(a), which may include, as determined by the office, a staggered implementation that prioritizes a subset of the information or prioritizes reporting by prosecutors' offices from counties with the largest populations.

(b)  In accordance with Subsection (a), on or before January 31 of each year, a prosecutor's office shall transmit required information for the preceding calendar year that does not contain any personally identifying information about an individual arrested or prosecuted to the office.

Sec. 47.0005.  USE OF INFORMATION TRANSMITTED TO OFFICE. The office shall:

(1)  on May 1 of each year, publish on the office's Internet website the information received from all prosecutors' offices under Section 47.0004 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 individual arrested or prosecuted;

(2)  on September 1 of each year, issue a report analyzing the information received from all prosecutors' offices that compares and contrasts the practices and trends among prosecutors' offices in this state and identifies any prosecutors' offices that are not in compliance with this chapter;

(3)  biannually publish issue-specific reports with more in-depth analysis of one or more areas of prosecutorial decision-making; and

(4)  annually publish at least one report focusing on racial disparities in prosecutorial decision-making.

Sec. 47.0006.  ADVISORY BOARD. (a) An advisory board is established to advise the office under this chapter. The advisory 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 other criminal defense attorneys; and

(B)  two members with direct experience as criminal defendants prosecuted under this state's criminal justice system.

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

Sec. 47.0007.  NONCOMPLIANCE. Notwithstanding any other law, if the office determines that a prosecutor's office is not in compliance with this chapter, the prosecutor's office is ineligible to receive funding from this 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. 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 certifies that the prosecutor's office is in compliance with this chapter.

Sec. 47.0008.  RELATION TO PUBLIC RECORDS ACTS. (a) Notwithstanding any other law, a prosecutor's office that is in compliance with this chapter and that 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 may satisfy the obligation under Chapter 552 by referring the requesting party to the Internet website that contains the information. The prosecutor's office is not required to otherwise collect and disclose the requested information.

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

SECTION 2.  (a) Not later than December 1, 2021, the governor shall make the initial appointments to the advisory board established under Section 47.0006, Government Code, as added by this Act.

(b)  Not later than March 1, 2022, a prosecutor's office shall post on the Internet website for the office the initial information as required by Section 47.0003, Government Code, as added by this Act.

(c)  Not later than September 1, 2022, the Office of Court Administration of the Texas Judicial System shall make the determinations required under Section 47.0004(a), Government Code, as added by this Act.

(d)  Not later than May 1, 2023, the Office of Court Administration of the Texas Judicial System shall post on the office's Internet website the initial information required under Section 47.0005(1), Government Code, as added by this Act.

(e)  Not later than September 1, 2023, the Office of Court Administration of the Texas Judicial System shall produce the initial reports required under Sections 47.0005(2), (3), and (4), Government Code, as added by this Act.

SECTION 3.  This Act takes effect September 1, 2021.