

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.

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

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

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

10 (1) the case number;

11 (2) the indictment number;

12 (3) the docket number;

13 (4) the unique identifier;

14 (5) the defendant's race;

15 (6) the defendant's gender;

16 (7) the defendant's disability status, including, as
17 applicable, the status of the defendant as having:

18 (A) an intellectual disability;

19 (B) a physical disability; or

20 (C) a sensory disability;

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

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

24 (B) observation by defense attorney; or

25 (C) another source;

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

- 1 (10) the arrest date;
2 (11) the district, precinct, or neighborhood of the
3 arrest;
4 (12) the primary arresting law enforcement agency;
5 (13) other governmental agencies involved in the
6 arrest;
7 (14) the charges listed on the arresting law
8 enforcement agency's paperwork;
9 (15) if the prosecutor declines to prosecute an
10 alleged offense, the reason for that decision;
11 (16) any charges filed by the prosecutor;
12 (17) the name of the prosecutor who approved each
13 filed charge;
14 (18) the defendant's eligibility for court-appointed
15 counsel and the proceeding in which that determination was made;
16 (19) the arraignment date;
17 (20) the date the charge was modified;
18 (21) the charge following any modification;
19 (22) whether diversion was offered;
20 (23) the date diversion was offered;
21 (24) the judge's position on diversion if stated on the
22 record;
23 (25) whether the defendant accepted any diversion
24 offered;
25 (26) the diversion terms, including the amount of any
26 fees the defendant is ordered to pay;
27 (27) whether the punishment for the offense prescribes

1 a mandatory minimum sentence;

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

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

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

8 (31) whether bond was secured, unsecured, or payable
9 from another type of arrangement;

10 (32) the date bail or bond was imposed;

11 (33) any court-ordered release conditions;

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

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

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

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

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

24 (A) the dates of the waiver;

25 (B) the rights waived; and

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

- 1 (37) whether a plea was offered;
2 (38) whether a time limit for acceptance was included
3 with a plea offer;
4 (39) the terms of all pleas offered to the defendant,
5 including:
6 (A) any charges dismissed;
7 (B) the sentence ranges for charges dismissed;
8 (C) the charges included in the plea;
9 (D) the sentence ranges for charges included in
10 the plea;
11 (E) any charges included in the plea but not
12 included in the convicted offenses; and
13 (F) any punishment or sentence offered for
14 accepting the plea;
15 (40) whether the plea was accepted or rejected;
16 (41) whether discovery was disclosed to the defense or
17 defendant before the plea;
18 (42) the date discovery was disclosed to the defense
19 or defendant;
20 (43) the judges presiding over pretrial proceedings;
21 (44) the case's disposition, including:
22 (A) whether the case or charges were dismissed by
23 the prosecutor or dismissed on the motion of the prosecutor and the
24 reason for the dismissal;
25 (B) the offenses of which the defendant was
26 convicted;
27 (C) if the defendant was convicted, whether by

1 plea, jury trial, or bench trial; and

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

4 (45) the presiding judge at disposition;

5 (46) the disposition date;

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

8 (48) the sentence length;

9 (49) the presiding judge at sentencing;

10 (50) the supervision terms;

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

13 (52) any fines, reimbursement fees, or court costs
14 imposed; and

15 (53) any forfeiture of property required.

16 (b) The prosecutor's office shall maintain a record of the
17 information required by Subsection (a) for each case until at least
18 the 10th anniversary of the date the alleged offense for the case
19 was committed.

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

22 (1) case dismissal and charging of offenses;

23 (2) bail;

24 (3) sentencing;

25 (4) plea bargains;

26 (5) grand jury practices;

27 (6) discovery practices;

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

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

5 (9) the manner in which fines, reimbursement fees, and
6 court costs are assessed;

7 (10) asset forfeiture practices;

8 (11) mental health screening and history;

9 (12) substance abuse screening and history;

10 (13) domestic violence survivors;

11 (14) diversion practices;

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

15 (16) internal discipline and related procedures;

16 (17) victim services;

17 (18) restorative justice programs;

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

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

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

26 (d) The prosecutor's office shall collect the following
27 information for each attorney employed in the office with the name

1 and other personally identifying information redacted or otherwise
2 ensuring the anonymity of the attorney:

- 3 (1) age;
- 4 (2) gender;
- 5 (3) race;
- 6 (4) date hired;
- 7 (5) title; and
- 8 (6) disciplinary history.

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

- 11 (1) the number of attorneys on staff;
- 12 (2) the average number of cases handled by an attorney
13 each year;
- 14 (3) the number of attorneys who worked for the office
15 in a temporary or contract capacity during the preceding calendar
16 year;
- 17 (4) the number of paralegals and administrative staff
18 employed by the office;
- 19 (5) the number of investigators who provided services
20 to the office during the preceding calendar year;
- 21 (6) the number of experts who provided services to the
22 office during the preceding calendar year; and
- 23 (7) the number of peace officers or detectives who
24 work directly for the prosecutor's office.

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

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

3 (2) otherwise making the information available on
4 request.

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

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

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

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

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

24 (b) In accordance with Subsection (a), on or before January
25 31 of each year, a prosecutor's office shall transmit required
26 information for the preceding calendar year that does not contain
27 any personally identifying information about an individual

1 arrested or prosecuted to the office.

2 Sec. 47.0005. USE OF INFORMATION TRANSMITTED TO OFFICE.

3 The office shall:

4 (1) on May 1 of each year, publish on the office's
5 Internet website the information received from all prosecutors'
6 offices under Section 47.0004 in an open electronic format that is
7 machine-readable, machine-searchable, and readily accessible to
8 the public, provided the information does not contain personally
9 identifying information about any individual arrested or
10 prosecuted;

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

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

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

21 Sec. 47.0006. ADVISORY BOARD. (a) An advisory board is
22 established to advise the office under this chapter. The advisory
23 board shall meet at least quarterly with the office to provide
24 comments and guidance to the office on any draft rules, policies,
25 plans, reports, or other decisions made by the office related to
26 this chapter.

27 (b) The advisory board:

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

3 (2) must include at least:

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

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

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

11 Sec. 47.0007. NONCOMPLIANCE. Notwithstanding any other
12 law, if the office determines that a prosecutor's office is not in
13 compliance with this chapter, the prosecutor's office is ineligible
14 to receive funding from this state's general revenue fund or other
15 fund or any state grant program administered by the attorney
16 general or other entity controlling grants to the prosecutor's
17 office. The office shall inform the comptroller and the
18 Legislative Budget Board of the ineligibility. Eligibility for
19 funding may be restored only after:

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

22 (2) the office certifies that the prosecutor's office
23 is in compliance with this chapter.

24 Sec. 47.0008. RELATION TO PUBLIC RECORDS ACTS. (a)
25 Notwithstanding any other law, a prosecutor's office that is in
26 compliance with this chapter and that receives a request for
27 information under Chapter 552 that the prosecutor's office

1 reasonably and in good faith believes can be satisfied by reference
2 to information publicly available under this chapter may satisfy
3 the obligation under Chapter 552 by referring the requesting party
4 to the Internet website that contains the information. The
5 prosecutor's office is not required to otherwise collect and
6 disclose the requested information.

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

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

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

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

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

27 (e) Not later than September 1, 2023, the Office of Court

H.B. No. 970

1 Administration of the Texas Judicial System shall produce the
2 initial reports required under Sections 47.0005(2), (3), and (4),
3 Government Code, as added by this Act.

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