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# A BILL FOR AN ACT

RELATING TO PROSECUTORIAL TRANSPARENCY.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1           SECTION 1. The legislature finds that the offices of the  
2 prosecuting attorney of the respective counties in the State,  
3 which receive taxpayer funding from and are subject to oversight  
4 by the legislature, are the most powerful actors in the criminal  
5 justice system. Among other things, prosecuting attorneys  
6 decide whether to charge people, and with what crimes. They  
7 determine, virtually unilaterally, whether individuals will be  
8 diverted from the criminal system, thereby avoiding criminal  
9 records and attendant collateral consequences. They also make  
10 influential recommendations regarding pretrial detention, bail,  
11 and sentencing. These decisions and more have a lasting impact  
12 on people accused of crime, victims, families, communities, and  
13 Hawaii's economy. Yet basic information and data about these  
14 offices and their practices, while nominally publicly available,  
15 are exceedingly difficult to access and understand.

16           The legislature further finds that the people of Hawaii  
17 have been frustrated by crimes committed by officers entrusted



1 to serve within offices of the prosecuting attorney. Scandals  
2 have involved multiple law enforcement officials and have led to  
3 multiple convictions. Greater transparency in the offices of  
4 prosecutors can help prevent future incidents in which  
5 prosecutors use the power of their office for personal gain at  
6 the expense of innocent citizens and taxpayers.

7 All individuals, including voters who determine which  
8 prosecutors should hold elected office and taxpayers who fund  
9 these offices, deserve unfettered access to this information in  
10 a way they can understand and use, unless protected by a  
11 recognized privilege or statutory exemption. In addition to  
12 educating voters, the offices of the prosecuting attorney should  
13 disclose information to help identify the causes of mass  
14 incarceration and racial disparities in the criminal justice  
15 system. This information will improve accountability for  
16 offices that violate the law and individuals' rights. It will  
17 help produce fairer outcomes in individual criminal cases,  
18 including better-informed plea negotiations. Transparency will  
19 also hasten improvements in prosecuting attorneys' offices  
20 themselves, creating management efficiencies and cost savings.

21 The legislature concludes that there is a compelling state



1 interest in implementing uniform transparency requirements for  
2 the offices of the prosecuting attorney around the State, as the  
3 public has a right to know such information.

4 Accordingly, the purpose of this Act is to increase  
5 prosecutorial transparency in the State.

6 SECTION 2. The Hawaii Revised Statutes is amended by  
7 adding a new chapter to be appropriately designated and to read  
8 as follows:

9 "CHAPTER

10 PROSECUTORIAL TRANSPARENCY

11 § -A Definitions. As used in this chapter:

12 "Charge" means any accusation of a crime by the offices of  
13 the prosecuting attorney of the respective counties, including  
14 but not limited to accusations brought by ticket, citation,  
15 information, complaint, indictment, or other charging instrument  
16 of an ordinance, citation, summary, misdemeanor, felony, or  
17 other type of crime.

18 "Policy" means any policy, procedure, guideline, manual,  
19 training material, direction, instruction, or other piece of  
20 information, whether formal or informal, oral or in writing,



1 that contains any guidance whatsoever for employees of the  
2 offices of the prosecuting attorney of the respective counties.

3       §    -B   Information to be collected, maintained, and  
4 disclosed. (a) Each office of the prosecuting attorney of the  
5 respective counties shall collect and disclose the following  
6 data for each case prosecuted by the office and maintain a  
7 record of all information collected for at least ten years:

- 8       (1) Defendant's race;
- 9       (2) Defendant's gender;
- 10      (3) Defendant's disability status, if any, including:
- 11           (A) Mental, psychiatric, developmental, and  
12           intellectual disabilities;
- 13           (B) Physical and mobility disabilities; and
- 14           (C) Sensory, vision, and hearing disabilities;
- 15      (4) District or neighborhood of arrest;
- 16      (5) Charges listed on arresting agency paperwork;
- 17      (6) Charges brought by the prosecuting attorney;
- 18      (7) Whether diversion was offered;
- 19      (8) The prosecutor's recommendation on bail or bond,  
20      including release conditions;
- 21      (9) Date range of any pretrial detention;



- 1           (10) All terms of all pleas offered, including but not  
2           limited to:
- 3           (A) Charges dismissed;
- 4           (B) Sentence ranges for charges dismissed;
- 5           (C) Charges in the plea;
- 6           (D) Sentence ranges for charges in the plea;
- 7           (E) Any charges covered by the plea but not part of  
8           the conviction; and
- 9           (F) Penalties or sentence offered for taking the  
10          plea, if any; and
- 11          (11) Fines, fees, or surcharges imposed, if any.
- 12          (b) The offices of the prosecuting attorney of the  
13          respective counties shall collect and publish all office  
14          policies. Office policies shall cover procedures and protocols  
15          relating to the following:
- 16          (1) Charge dismissal and charging;
- 17          (2) Bail;
- 18          (3) Sentencing;
- 19          (4) Plea bargains;
- 20          (5) Grand jury practices;
- 21          (6) Discovery practices;



- 1 (7) Witness treatment, including when and how to procure a
- 2 material witness warrant;
- 3 (8) How a decision is made to prosecute a juvenile as an
- 4 adult;
- 5 (9) Assessment of fines and fees;
- 6 (10) Criminal and civil forfeiture practices;
- 7 (11) Mental health screening and collection of mental
- 8 health history;
- 9 (12) Substance abuse history screening;
- 10 (13) Domestic violence survivors;
- 11 (14) Diversion policies and practices;
- 12 (15) Human resources, including but limited to hiring,
- 13 evaluation, firing, promotion, and rotation among
- 14 divisions or units;
- 15 (16) Internal discipline;
- 16 (17) Victim services;
- 17 (18) Restorative justice programs;
- 18 (19) Annual office trainings;
- 19 (20) Practices involving tracking and responding to prison
- 20 inmates' applications for parole or resentencing; and
- 21 (21) Policies specific to vulnerable populations.



1 (c) The offices of the prosecuting attorney of the  
2 respective counties shall collect and publish the following  
3 information for every attorney employed in the office, with  
4 names and other personally identifying information redacted or  
5 replaced by an anonymizing identifier.

6 (1) Age;

7 (2) Gender;

8 (3) Race;

9 (4) Date hired;

10 (5) Title; and

11 (6) Disciplinary history.

12 § -C Reporting requirements. (a) Beginning January 1,  
13 2021, the offices of the prosecuting attorney of the respective  
14 counties shall make publicly available all the information  
15 required pursuant to section -B by posting it on the office's  
16 website and making it readily available to any person who  
17 requests it directly from the office. The information required  
18 pursuant to subsection -B (b) shall include the effective  
19 date of the policy or the date the information was gathered, and  
20 the office shall ensure that it posts revised, updated, or newly



1 drafted policies or newly collected information on a timely  
2 basis; provided policies are updated at least once each year.

3 (b) No later than January 1, 2023, the criminal justice  
4 research institute shall:

5 (1) Determine a uniform and consistent manner in which the  
6 offices of the prosecuting attorney of the respective  
7 counties shall transmit the data required pursuant to  
8 section -B;

9 (2) Determine an implementation schedule and plan by which  
10 all offices of the prosecuting attorney in the State  
11 shall report all data required pursuant to section

12 -B. The plan may include, at the sole discretion  
13 of the criminal justice research institute,  
14 implementation on a rolling basis that starts by  
15 prioritizing a subset of the data in section -B or  
16 starts by prioritizing reporting from larger offices;

17 (3) In accordance with the plan, begin receiving data from  
18 the offices of the prosecuting attorney, stripped of  
19 any individualized or identifying personal information  
20 about any person arrested or prosecuted, on or before  
21 January 31st, for the preceding calendar year;





- 1 (4) On May 1 of each year, begin publishing online the  
2 data collected under section -B in a modern, open,  
3 electronic format that is machine-readable, machine-  
4 searchable, and readily accessible to the public on  
5 the centralized statewide criminal pretrial justice  
6 data reporting and collection system. No published  
7 data shall contain individualized or identifying  
8 personal information about any person arrested or  
9 prosecuted;
- 10 (5) On September 1 of each year, produce an annual report  
11 that analyzes the data received from all offices of  
12 the prosecuting attorney comparing and contrasting the  
13 practices and trends among and between offices in the  
14 State and identifying any offices that are not in  
15 compliance with this chapter; and
- 16 (6) From time-to-time, but not less frequently than twice  
17 per year, publish issue-specific reports that provide  
18 a deeper analysis of one or more areas of  
19 prosecutorial decision-making. At least one such  
20 report per year shall focus on racial disparities in a  
21 particular point of prosecutorial decision-making.



1 (c) Notwithstanding any other provision of law, where the  
2 criminal justice research institute has made a determination  
3 that an office of the prosecuting attorney is not in compliance  
4 with this chapter, that office shall be ineligible to receive  
5 funding from the State. Funding shall be restored only after  
6 full compliance with the requirements of this section, after the  
7 office provides the required information from the date of non-  
8 compliance through the current date, and upon a compliance  
9 review by the criminal justice research institute and  
10 certification that the office is in compliance with this  
11 chapter.

12 (d) If an office of the prosecuting attorney is in  
13 compliance with this section and receives a request for  
14 information under chapter 92F that the office reasonably and in  
15 good faith believes can be satisfied by reference to data made  
16 publicly available under this chapter, the office may satisfy  
17 its obligation under chapter 92F by referring the requesting  
18 party to the relevant website containing the data. In such  
19 circumstance, the office of the prosecuting attorney shall not  
20 be required to collect and disclose the particular data  
21 requested.



1           If the requesting party does not believe that its request  
2 can be satisfied with data collected under this section and  
3 published on the relevant website, the requesting party may  
4 bring a claim in accordance with chapter 92F."

5           SECTION 3. No later than October 1, 2020, the governor  
6 shall establish a prosecutorial transparency advisory board.  
7 The advisory board shall meet no less than once per quarter with  
8 the criminal justice research institute to provide input and  
9 guidance on any and all draft rules, regulations, policies,  
10 plans, reports, or other decisions made by the criminal justice  
11 research institute relating to this Act. The advisory board  
12 shall be appointed by the governor without regard to chapter 76  
13 and shall be comprised of no fewer than seven members, including  
14 at least two members who are public defenders or criminal  
15 defense attorneys and two members who have direct experience of  
16 being prosecuted in the State's criminal justice system. The  
17 members of the advisory board shall serve without compensation.

18           SECTION 4. In codifying the new sections added by section  
19 2 of this Act, the revisor of statutes shall substitute  
20 appropriate section numbers for the letters used in designating  
21 the new sections in this Act.



1           SECTION 5. If any provision of this Act, or the  
2 application thereof to any person or circumstance, is held  
3 invalid, the invalidity does not affect other provisions or  
4 applications of the Act that can be given effect without the  
5 invalid provision or application, and to this end the provisions  
6 of this Act are severable.

7           SECTION 6. This Act shall take effect on July 1, 2050.



**Report Title:**

Office of the Prosecuting Attorney; Criminal Justice Research Institute; Prosecutorial Transparency; Reporting Requirements; Advisory Board

**Description:**

Requires the offices of the prosecuting attorney of the respective counties to collect and publish certain data relating to criminal defendants and prosecutorial decision-making. Requires governor to establish a prosecutorial transparency advisory board. Takes effect on 7/1/2050. (HD1)

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

