

JAN 17 2020

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 Hawai'i'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 All individuals, including voters who determine which
17 prosecutors should hold elected office and taxpayers who fund



1 these offices, deserve unfettered access to this information in
2 a way they can understand and use, unless protected by a
3 recognized privilege or statutory exemption. In addition to
4 educating voters, the offices of the prosecuting attorney should
5 disclose information to help identify the drivers of mass
6 incarceration and racial disparities in the criminal justice
7 system. Such information will improve accountability for
8 offices that violate the law and individuals' rights. It will
9 help produce fairer outcomes in individual criminal cases,
10 including via better-informed plea negotiations and it will
11 hasten improvements in prosecuting attorneys' offices
12 themselves, creating management efficiencies and cost savings.
13 The legislature intends these and other salutary results of
14 increased prosecutorial transparency.

15 The legislature concludes that it is a compelling state
16 interest to implement uniform information transparency
17 requirements for offices of the prosecuting attorney around the
18 State, and that the public has a right to know such information.

19 Accordingly, the purpose of this Act is to increase
20 prosecutorial transparency in the State.



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

4 "CHAPTER

5 PROSECUTORIAL TRANSPARENCY

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

7 "Case number" means the unique number assigned to a
8 criminal case associated with a particular criminal charge.

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

15 "Charge description" means the name of the charge as given
16 by the penal code; a statement of the conduct that is alleged to
17 have been violated; the associated statutory section
18 establishing such conduct as criminal; the misdemeanor, felony,
19 or other classification of the charge; and any level or tier
20 within the misdemeanor, felony, or other classification.



1 "Charge ID" means the unique identification number assigned
2 to a charge.

3 "Charge modifier" means any aggravating or mitigating
4 circumstance of an alleged charge that enhances, reduces, or
5 reclassifies it to a different classification grade or level.

6 "Disposition" means the conclusion of the prosecution of
7 any charge, including but not limited to nolle prosequi,
8 diversion, dismissal, dismissal as part of plea bargain,
9 conviction as part of plea bargain, conviction at trial,
10 acquittal, or any other means.

11 "Initiation" means the creation or institution of a charge
12 against a criminal defendant, whether by police, prosecutors,
13 grand jury, or other entity.

14 "Policy" means any policy, procedure, guideline, manual,
15 training material, direction, instruction, or other piece of
16 information, whether formal or informal, oral or in writing,
17 that contains any guidance whatsoever for employees of the
18 offices of the prosecuting attorney of the respective counties.

19 "Unique identifier" means a randomly generated number that
20 is assigned in place of a defendant's name.



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

- 6 (1) Case number;
- 7 (2) Indictment number;
- 8 (3) Docket number;
- 9 (4) Unique identifier;
- 10 (5) Defendant race;
- 11 (6) Defendant gender;
- 12 (7) Defendant disability status, if any, including:
 - 13 (A) Mental, psychiatric, developmental, and
 - 14 intellectual disabilities;
 - 15 (B) Physical and mobility disabilities; and
 - 16 (C) Sensory, vision, and hearing disabilities;
- 17 (8) Source of information of the defendant's disability
18 status, including:
 - 19 (A) Defendant's advocate or attorney;
 - 20 (B) Observation by prosecutor; or
 - 21 (C) Other;



- 1 (9) Incident date;
- 2 (10) Arrest date;
- 3 (11) District or neighborhood of arrest;
- 4 (12) Primary arresting agency;
- 5 (13) Other agencies involved in arrest, if any;
- 6 (14) Charges listed on arresting agency paperwork;
- 7 (15) The reason for the prosecuting attorney declining to
8 prosecute the arrest, if applicable;
- 9 (16) Charges brought by the prosecuting attorney;
- 10 (17) Name of the prosecutor who approved each charge;
- 11 (18) Whether the defendant was deemed eligible for court-
12 appointed counsel, the name of the proceeding, and
13 location of where such determination was made;
- 14 (19) Arraignment date;
- 15 (20) Charge modification date;
- 16 (21) Charge following modification;
- 17 (22) Whether diversion was offered;
- 18 (23) Date diversion was offered;
- 19 (24) Judicial position on diversion, if any was stated on
20 the record;



- 1 (25) If diversion was offered, whether it was accepted by
- 2 the defendant;
- 3 (26) Diversion terms, including how much defendant must
- 4 pay, if applicable;
- 5 (27) Whether the charge carried a mandatory minimum
- 6 sentence;
- 7 (28) The prosecutor's recommendation on bail or bond,
- 8 including release conditions;
- 9 (29) Whether bail or bond was imposed on the defendant;
- 10 (30) Whether bond was secured, unsecured, or other type;
- 11 (31) Date bail or bond imposed;
- 12 (32) Release conditions, if ordered;
- 13 (33) Date range of any pretrial detention;
- 14 (34) Whether a risk assessment or other algorithm-based or
- 15 quantitative tool was used in determining whether
- 16 pretrial detention was ordered and the amount of bail
- 17 or bond, if applicable, including:
- 18 (A) The name of the office or agency that conducted
- 19 the risk assessment; and



- 1 (B) The name of offices, agencies, individuals, or
2 attorneys that received the risk assessment
3 results;
- 4 (35) Whether any statutory or constitutional rights of
5 defendants were waived, either by stipulation or on
6 the record, including:
- 7 (A) The dates of such waiver;
8 (B) The rights waived; and
9 (C) Whether and which rights were waived as a
10 condition of a plea bargain;
- 11 (36) Whether a plea was offered;
- 12 (37) Whether a time limit was provided with a plea offer;
- 13 (38) All terms of all pleas offered, including but not
14 limited to:
- 15 (A) Charges dismissed;
16 (B) Sentence ranges for charges dismissed;
17 (C) Charges in the plea;
18 (D) Sentence ranges for charges in the plea;
19 (E) Any charges covered by the plea but not part of
20 the conviction; and



- 1 (F) Penalties or sentence offered for taking the
- 2 plea, if any;
- 3 (39) Whether the plea was accepted or rejected;
- 4 (40) Whether discovery was offered to defendant before the
- 5 plea;
- 6 (41) Date discovery was disclosed to defense or defendant;
- 7 (42) Presiding judge at pretrial stage;
- 8 (43) Disposition, including:
 - 9 (A) Case or charges dropped by the prosecuting
 - 10 attorney or dismissed on motion of the
 - 11 prosecuting attorney, and reason for dismissal;
 - 12 (B) All charges the defendant was convicted of, if
 - 13 any;
 - 14 (C) If convicted, whether by plea, jury trial, or
 - 15 bench trial; and
 - 16 (D) The reason for dismissal if the case was
 - 17 dismissed by the judge;
- 18 (44) Presiding judge at disposition;
- 19 (45) Disposition date;
- 20 (46) Sentence type;
- 21 (47) Sentence length;



1 (48) Presiding judge at sentencing;

2 (49) Supervision terms;

3 (50) Services required or provided, if any;

4 (51) Fines, fees, or surcharges imposed, if any; and

5 (52) Forfeiture of property required, if any.

6 (b) The offices of the prosecuting attorney of the
7 respective counties shall collect and publish all office
8 policies. Office policies shall cover procedures and protocols
9 relating to the following:

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 when and how to procure a
17 material witness warrant;

18 (8) How a decision is made to prosecute a juvenile as an
19 adult;

20 (9) Assessment of fines and fees;

21 (10) Criminal and civil forfeiture practices;



- 1 (11) Mental health screening and collection of mental
- 2 health history;
- 3 (12) Substance abuse history screening;
- 4 (13) Domestic violence survivors;
- 5 (14) Diversion policies and practices;
- 6 (15) Human resources, including but limited to hiring,
- 7 evaluation, firing, promotion, and rotation among
- 8 divisions or units;
- 9 (16) Internal discipline;
- 10 (17) Victim services;
- 11 (18) Restorative justice programs;
- 12 (19) Annual office trainings;
- 13 (20) Practices involving tracking and responding to prison
- 14 inmates' applications for parole or resentencing; and
- 15 (21) Policies specific to vulnerable populations.
- 16 (c) The offices of the prosecuting attorney of the
- 17 respective counties shall collect and publish the following
- 18 information for every attorney employed in the office, with
- 19 names and other personally identifying information redacted or
- 20 replaced by an anonymizing identifier.
- 21 (1) Age;



- 1 (2) Gender;
- 2 (3) Race;
- 3 (4) Date hired;
- 4 (5) Title; and
- 5 (6) Disciplinary history.
- 6 (d) The offices of the prosecuting attorney of the
- 7 respective counties shall collect and publish the following
- 8 information:
- 9 (1) Number of attorneys on staff;
- 10 (2) Cases handled per year per attorney;
- 11 (3) Number of attorneys who worked for the office in a
- 12 temporary or contract capacity during the previous
- 13 calendar year;
- 14 (4) Number of paralegals and administrative staff employed
- 15 by the office;
- 16 (5) Number of investigators utilized during the previous
- 17 calendar year;
- 18 (6) Number of experts utilized during the previous
- 19 calendar year, whether on staff or otherwise; and
- 20 (7) Number of police officers and detectives who work
- 21 directly for the office of the prosecuting attorney.



1 § -C Reporting requirements. (a) Beginning January 1,
2 2021, the offices of the prosecuting attorney of the respective
3 counties shall make publicly available all the information
4 required pursuant to section -B by posting it on the office's
5 website and making it readily publicly available to any person
6 who requests it directly from the office. The information
7 required pursuant to subsection -B (b) shall include the
8 effective date of the policy or the date the information was
9 gathered, and the office shall ensure that it posts revised,
10 updated, or newly drafted policies or newly collected
11 information on a timely basis; provided policies are updated at
12 least once each year.

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

15 (1) Determine a uniform and consistent manner in which the
16 offices of the prosecuting attorney of the respective
17 counties shall transmit the data required pursuant to
18 section -B;

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



- 1 -B . The plan may include, at the sole discretion
2 of the criminal justice research institute,
3 implementation on a rolling basis that starts by
4 prioritizing a subset of the data in section -B or
5 starts by prioritizing reporting from larger offices;
- 6 (3) In accordance with the plan, begin receiving data from
7 the offices of the prosecuting attorney, stripped of
8 any individualized or identifying personal information
9 about any person arrested or prosecuted, on or before
10 January 31st, for the preceding calendar year;
- 11 (4) On May 1 of each year, begin publishing online the
12 data collected under section -B in a modern, open,
13 electronic format that is machine-readable, machine-
14 searchable, and readily accessible to the public on
15 the centralized statewide criminal pretrial justice
16 data reporting and collection system. No published
17 data shall contain individualized or identifying
18 personal information about any person arrested or
19 prosecuted;
- 20 (5) On September 1 of each year, produce an annual report
21 that analyzes the data received from all offices of



1 the prosecuting attorney comparing and contrasting the
2 practices and trends among and between offices in the
3 State and identifying any offices that are not in
4 compliance with this chapter; and

5 (6) From time-to-time, but not less frequently than twice
6 per year, publish issue-specific reports that provide
7 a deeper analysis of one or more areas of
8 prosecutorial decision-making. At least one such
9 report per year shall focus on racial disparities in a
10 particular point of prosecutorial decision-making.

11 (c) Notwithstanding any other provision of law, where the
12 criminal justice research institute has made a determination
13 that an office of the prosecuting attorney is not in compliance
14 with this chapter, that office shall be ineligible to receive
15 funding from the State. Funding shall be restored only after
16 full compliance with the requirements of this section, after the
17 office provides the required information from the date of non-
18 compliance through the current date, and upon a compliance
19 review by the criminal justice research institute and
20 certification that the office is in compliance with this
21 chapter.



1 (d) If an office of the prosecuting attorney is in
2 compliance with this section and receives a request for
3 information under the Hawaii uniform information practices act
4 that the office reasonably and in good faith believes can be
5 satisfied by reference to data made publicly available under
6 this section, the office may satisfy its obligation under the
7 Hawaii uniform information practices act by referring the
8 requesting party to the relevant website containing the data.
9 In such circumstance, the office of the prosecuting attorney
10 need not collect and disclose the particular data requested.

11 If the requesting party does not believe that its request
12 can be satisfied with data collected under this section and
13 published on the relevant website, the requesting party may file
14 suit in accordance with the Hawaii uniform information practices
15 act to compel disclosure."

16 SECTION 3. No later than October 1, 2020, the governor
17 shall establish a prosecutorial transparency advisory board.
18 The advisory board shall meet no less than once per quarter with
19 the criminal justice research institute to provide input and
20 guidance on any and all draft rules, regulations, policies,
21 plans, reports, or other decisions made by the criminal justice



1 research institute relating to this Act. The advisory board
2 shall be appointed by the governor without regard to chapter 76
3 and shall be comprised of no fewer than seven members,
4 including at least two members who are public defenders or
5 criminal defense attorneys and two members who have direct
6 experience of being prosecuted by the State's criminal justice
7 system. The members of the advisory board shall serve without
8 compensation.

9 SECTION 4. In codifying the new sections added by section
10 2 of this Act, the revisor of statutes shall substitute
11 appropriate section numbers for the letters used in designating
12 the new sections in this Act.

13 SECTION 5. If any provision of this Act, or the
14 application thereof to any person or circumstance, is held
15 invalid, the invalidity does not affect other provisions or
16 applications of the Act that can be given effect without the
17 invalid provision or application, and to this end the provisions
18 of this Act are severable.

19 SECTION 6. This Act shall take effect on July 1, 2020.

20

INTRODUCED BY:

Kal Rhode (L/R)



S.B. NO. 2239

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.

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

