

HOUSE BILL REPORT

HB 2465

As Reported by House Committee On:
Civil Rights & Judiciary

Title: An act relating to collecting and publishing information regarding prosecutorial filing policies and practices.

Brief Description: Collecting and publishing information regarding prosecutorial filing policies and practices.

Sponsors: Representative Gildon.

Brief History:

Committee Activity:

Civil Rights & Judiciary: 1/22/20, 2/5/20 [DPS].

Brief Summary of Substitute Bill

- Requires certain county prosecutors and elected city attorneys to track and summarize data and information on filing practices for adult felonies and misdemeanors and submit these summaries to the Office of the Attorney General (AGO).
- Requires the AGO to collect and compile the information and publish an annual report on its website.

HOUSE COMMITTEE ON CIVIL RIGHTS & JUDICIARY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 13 members: Representatives Kilduff, Chair; Thai, Vice Chair; Dufault, Assistant Ranking Minority Member; Goodman, Hansen, Kirby, Klippert, Orwall, Peterson, Rude, Valdez, Walen and Ybarra.

Staff: Emily Williams (786-7291) and Cece Clynch (786-7195).

Background:

County prosecutors are separately elected officials in each of Washington's 39 counties. County prosecutor is a full-time position in counties with a population of 18,000 or more; it

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may be a part-time position in smaller counties. County prosecutors have various duties, including prosecuting civil and criminal actions in which the state or county may be a party.

Some cities have an elected city attorney. The city attorney represents the city in all civil and criminal actions brought by or against the city. The city attorney may perform other duties as directed by ordinance of the city council.

Generally, city attorneys prosecute misdemeanors and gross misdemeanors, while county prosecutors prosecute both felonies and misdemeanors.

County prosecutors and city attorneys generally have discretion over whether to file charges against a criminal defendant. The Sentencing Reform Act of 1981 provides guidance for prosecutorial decisionmaking in felony cases. The statute makes clear that the standards are only intended as guidance for prosecutors and do not create a right or benefit enforceable at law against the state. Some county prosecutors have developed and published charging guidelines and standards which incorporate this statutory guidance.

Summary of Substitute Bill:

County prosecutors and elected city attorneys who receive more than 5,000 adult felony and misdemeanor referrals annually must track:

1. the number and types of criminal referrals that are received from law enforcement agencies;
2. the number and types of cases where charges were filed; and
3. the number and types of cases where charges were not filed.

These county prosecutors and elected city attorneys must produce an annual summary of trends in adult felony and misdemeanor referrals and charges filed. This summary must include a narrative explanation describing the trends in adult felony and misdemeanor referrals and charges and the reasons why charges were not filed, with reference to the types of cases where charges were and were not filed.

This report, together with any filing standards or policies developed or used by the elected city attorney or the county prosecutor, must be provided to the Office of the Attorney General (AGO) in accord with policies and deadlines established by that office. It is explicitly provided that nothing in these requirements requires the release of attorney work product.

The AGO must adopt policies for administration, including:

1. the categories of crimes that must be reported;
2. the format for reports;
3. deadlines for and frequency of reports; and
4. other policies deemed necessary by the AGO.

The AGO must annually collect, compile, and publish this information from the previous year on its website by February 28.

Substitute Bill Compared to Original Bill:

The substitute bill: (1) limits the city attorneys and county prosecutors who must report to those who receive more than 5,000 adult felony and misdemeanor referrals annually; and (2) specifies that attorney work product is not required to be disclosed.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Substitute Bill: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) This bill has to do with accountability and transparency of our elected prosecutors. The idea originally came from a report called "Systemic Failure" that concerned the Seattle city prosecutor's office. The study showed that in 2007 the office declined to prosecute about 17 percent of cases presented by law enforcement. In 2017 that same office declined to take on almost 50 percent of cases presented by law enforcement. It is hard to find information about why this is the case. These elected officials and the record of their decisions should be open the way that other elected officials' decisions are public information. Although the numbers exist, they are not easily accessible or easy to understand. Information should be boiled down to a single document so that the public can evaluate the performance of their elected officials. The narrative portion allows the prosecutors to explain the reasoning behind their decisions. Law enforcement officers are often frustrated that they investigate and arrest someone and then the person is not charged by the prosecutor. Police officers want a better understanding about why cases are not prosecuted. Occasionally officers get a decline memo that explains why, but generally, a little information will go a long way.

(Opposed) There is tension between what law enforcement officers and prosecutors look at when they make decisions. Prosecutors look to see if they can prove something beyond a reasonable doubt, whereas police officers may arrest for probable cause. Something may satisfy probable cause but the prosecutor may not be able to prove it beyond a reasonable doubt. There is already an enormous amount of data available. The Administrative Office of the Courts provides information on every county, the number of cases filed, what those cases are, and how they are resolved. This report asks prosecutors to do something that was repealed in House Bill 2804 in 2012. The basis for the repeal was that it was a waste of resources to ask the prosecutors to do an annual report that most people did not look at. There is less interest in what prosecutors do in smaller counties; the real question is in Seattle. The utility of a state-wide mandate is unclear. By one estimate, in Franklin County, which receives 3,000 cases, it would take eight weeks for one person to prepare these reports.

Persons Testifying: (In support) Representative Gildon, prime sponsor; and James McMahan, Washington Association of Sheriffs and Police Chiefs.

(Opposed) Russell Brown, Washington Association of Prosecuting Attorneys.

Persons Signed In To Testify But Not Testifying: None.