

SENATE BILL REPORT

SB 5691

As Reported by Senate Committee On:
Law & Justice, January 27, 2022

Title: An act relating to increasing transparency and accountability regarding prosecutorial filing policies and practices.

Brief Description: Increasing transparency and accountability regarding prosecutorial filing policies and practices.

Sponsors: Senators Gildon, Honeyford and Rivers.

Brief History:

Committee Activity: Law & Justice: 1/20/22, 1/27/22 [DPS-WM, DNP, w/oRec].

Brief Summary of First Substitute Bill

- Requires all county prosecuting attorneys that receive over 5000 criminal referrals annually to track all referrals and filing decisions including petitions to resentence.
- Requires prosecutors to create a publicly available report of this data, along with a strategy for referring, diverting, and charging referrals.

SENATE COMMITTEE ON LAW & JUSTICE

Majority Report: That Substitute Senate Bill No. 5691 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.

Signed by Senators Dhingra, Chair; Trudeau, Vice Chair; Kuderer, Pedersen and Salomon.

Minority Report: Do not pass.

Signed by Senators Padden, Ranking Member; McCune, Assistant Ranking Member; Honeyford.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

Minority Report: That it be referred without recommendation.

Signed by Senator Wagoner.

Staff: Joe McKittrick (786-7287)

Background: It is the role of the prosecuting attorney, in part, to prosecute all criminal actions in which the state or the county may be a party. The prosecuting attorney may appoint one or more deputy prosecuting attorney's who must have the same power in all respects as does their principal.

The office of the prosecuting attorney is vested with broad authority to prosecute criminal cases occurring within its jurisdiction. In superior courts and district courts, the county prosecutors represent the state. In municipal courts, local prosecutors represent the city.

More than just an advocate, prosecutors have the responsibility of a minister of justice and as such are held to a higher standard of conduct than other attorneys. Prosecutors must discharge their public duties in an impartial manner and with fairness. Prosecutors must exercise sound discretion in the performance of their duties and must not act in an arbitrary or discriminatory manner.

Prosecutors have broad discretionary authority to file charges or not file charges in any particular case. State law provides prosecutorial standards intended to guide prosecutors in the exercise of prosecutorial discretion.

Summary of Bill: The bill as referred to committee not considered.

Summary of Bill (First Substitute): All county prosecutors that receive over 5,000 referrals annually must track the number and types of adult and juvenile felony and misdemeanor referrals received from law enforcement agencies and likewise track how the cases were filed and the number of cases where charges were either filed or not filed. Prosecutors must also track the number of cases where the prosecutor has petitioned for resentencing.

The Prosecutor's offices must also post an annual report of this data on their jurisdiction's website. The annual report must include a brief summary describing the local trends in adult referrals and charges as well as the jurisdiction's strategy for referring, diverting, or charging certain classes of crimes such as violent crime and property crime.

The prosecutor's offices must provide a copy of any filing standards or policies that precludes taking action on referrals from law enforcement, restricting prosecution of certain crimes, or requires diversion of adult felonies and misdemeanors.

If not specifically funded, this act is null and void.

EFFECT OF CHANGES MADE BY LAW & JUSTICE COMMITTEE (First

Substitute):

- Limits the reporting requirements to county prosecutors.
- Adds a reporting requirement for juvenile felonies and misdemeanors.
- Adds a reporting requirement for cases where prosecutors petition for resentencing.
- Adds a null and void clause.

Appropriation: None.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony on Original Bill: *The committee recommended a different version of the bill than what was heard.* PRO: Accountability, consistency, and transparency is something that is desperately needed in the judicial system. The data that would be gathered would make large strides towards fairness in that system. The data collected should be expanded to include data on the race of individuals against whom prosecutors have filed charges.

The collection of data is paramount to transparency and accountability in the criminal justice system. Although more information should be collected and reported, this bill is a step in the right direction.

It is important for the citizens of Washington to have all relevant information on those individuals who wish to be elected to office in this state. Being able to easily obtain and track data to see how an elected official responds to criminal referrals is crucial to allow voters to cast an informed vote. This would be an amazing for local jurisdictions to track how well diversion programs are working for each community and tailor those programs to their needs. This bill better public safety.

Public perception is that law enforcement plays a significant role in the development of cases. Law enforcement officers are generally a person's first interactions with the criminal justice system. Law enforcement's influence fades after charges are referred to a prosecutor's office whose power over the trajectory of a case rises immensely. This bill establishes standard reporting metrics to help officers and the public to better understand the larger trends within a prosecutor's office. Because transparency is rarely a bad thing, we encourage it here.

OTHER: While data transparency is vital, the data contemplated in this bill is complex, expensive to gather, and difficult to explain. Referral data paints a small and likely imprecise picture of what is going on within any particular prosecutor's office. There are

vast and varied reasons a prosecutor may chose to decline to file referred charges. The costs of tracking this data would be significant and would be difficult, if not impossible for smaller offices to comply with. This could prevent prosecutors' offices from hiring attorneys to prosecute cases and instead require those offices to hire staff to collect and process this data.

This issue is a double-edged sword. The data collected under this bill could be misleading and would not be comparable across jurisdictions. Likewise, this bill would bully prosecutors into thinking they have to be more proactive in filing more charges, and that is not the reason we should be publishing information. We have to look at this with open eyes and determine what we are really going to accomplish with this law.

Persons Testifying: PRO: Senator Chris Gildon, Prime Sponsor; Kehaulani Walker, FOTi; Cynthia Carr, FOTi; Michelle Mason, FOTi; Taylor Gardner.

OTHER: Kari Reardon, Washington Defender Association/Washington Association of Criminal Defense Lawyers; Russell Brown, WA Association of Prosecuting Attorneys.

Persons Signed In To Testify But Not Testifying: No one.