

# SENATE BILL REPORT

## SB 5944

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As of January 22, 2024

**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 and Dhingra.

**Brief History:**

**Committee Activity:** Law & Justice: 1/22/24.

**Brief Summary of Bill**

- Requires prosecutor's offices who receive more than 5000 criminal referrals annually to track certain data.

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### SENATE COMMITTEE ON LAW & JUSTICE

**Staff:** Joe McKittrick (786-7287)

**Background:** Prosecuting Attorneys. Each of Washington's 39 counties has an elected prosecuting attorney who is authorized by law to appear for and represent their respective county or the state in actions and proceedings before the courts and judicial officers. The duties of the prosecuting attorney include:

- acting as legal adviser of the legislative authority of the county in which the prosecuting attorney is elected;
- appearing for and representing the state, county, and school districts in all criminal and civil proceeding in which the state, county, or school district in the county may be a party;
- prosecuting all criminal and civil action in which the state or the county may be a party; and

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*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.*

- seeking to reform and improve the administration of criminal justice and to stimulate efforts to remedy inadequacies or injustice in substantive or procedural law.

The Criminal Process. Prosecuting attorneys represent the state in both adult criminal cases and juvenile criminal adjudications and may file misdemeanor, gross misdemeanor, or felony criminal charges. While city or municipal prosecutors may file misdemeanor or gross misdemeanor charges, only the county prosecutors may file felony charges. The maximum sentence for a misdemeanor is 90 days in jail, a \$1,000 fine, or both jail and a fine, the maximum sentence for a gross misdemeanor is 364 days in jail, a \$5,000 fine, or both jail and a fine, and a felony is any crime that carries with it a potential sentence of over 364 days imprisonment.

While the prosecutor's office pursues criminal cases in court, the various law enforcement agencies throughout the state are the primary criminal investigators. A case is referred to the prosecuting attorney's office when law enforcement formally submits the allegation and underlying evidence to the prosecutor's office who will then review the information and determine if there is sufficient legally admissible evidence to support the charge and whether the case meets the office's filing and disposition standards.

When a case does not meet the filing and disposition standards, or the office determines there is insufficient evidence to prove the charge beyond a reasonable doubt, the prosecutor's office will decline to formally file charges in court. If charges are filed, the case may ultimately be disposed of through a trial, plea agreement, or dismissal, or the case may be diverted to an alternative to prosecution such as veteran's court or drug court.

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

**Summary of Bill (Proposed Substitute):** All prosecuting attorney's offices that receive more than 5000 adult felony and misdemeanor referrals annually must track the following data:

- the number and types of adult felony and misdemeanor referrals received from law enforcement agencies;
- the number and types of adult felony and misdemeanor cases where charges are filed;
- the number and types of adult felony and misdemeanor cases where charges are not filed;
- the number of juvenile felony and misdemeanor referrals received from law enforcement agencies;
- the number of juvenile felony and misdemeanor referrals where charges are filed;
- the number of juvenile felony and misdemeanor referrals where charges are not filed; and
- the number and type of adult felony and misdemeanor cases where the prosecutor has petitioned the court for resentencing.

Prosecuting attorney's offices must post an annual report on the local jurisdiction website

that includes the number and type of adult felony and misdemeanor referrals received from law enforcement and the number and type of adult felony and misdemeanor cases where charges were filed and not filed. The prosecuting attorney's office must also provide a copy of any filing standards or policies that precludes taking action on referrals from law enforcement, restricts prosecution of certain crimes, or requires diversion of adult felonies and misdemeanors.

**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 Proposed Substitute:** PRO: The public should be able to evaluate the work of elected officials. This bill would require some of our larger prosecutor's offices to track certain data and make that available to the public. Smaller prosecutor's offices would not be affected by this bill. This is a step in the right direction towards increasing public safety. By collecting this data, we can determine areas where prosecutor's offices need improvement. Prosecutors should be accountable to the public. Too few people understand that cases filed by prosecutors reflect only a portion of potential cases referred by police. This bill casts a light on prosecutors the roll in keeping communities safe or in contributing to their decay. Officers often become frustrated because they see people they believe should be held accountable not being held accountable when potential charges are not filed.

OTHER: In 2011 the Legislature removed the requirement that prosecutor's offices track similar data because no one was utilizing it. Enacting this bill would come with a large expense. There is not money in county prosecutor's offices to stand up the required system to track this data. This bill would require upfront funding, and a steady stream of funding. Prosecutor's offices are already understaffed by 10 to 30 percent, and this bill would likely require these offices assign a full-time attorney to track this data.

**Persons Testifying:** PRO: Senator Chris Gildon, Prime Sponsor; Sheldon Beddo; James Schrimpsheer, Washington State Fraternal Order of Police; James McMahan, WA Assoc Sheriffs & Police Chiefs.

OTHER: Russell Brown, WA Association of Prosecuting Attorneys.

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