

LEGISLATURE OF NEBRASKA  
ONE HUNDRED SEVENTH LEGISLATURE  
FIRST SESSION

**LEGISLATIVE BILL 151**

Introduced by Morfeld, 46.

Read first time January 08, 2021

Committee:

- 1 A BILL FOR AN ACT relating to criminal procedure; to adopt the
- 2 Prosecutorial Transparency Act; and to provide severability.
- 3 Be it enacted by the people of the State of Nebraska,

1           Section 1. Sections 1 to 10 of this act shall be known and may be  
2 cited as the Prosecutorial Transparency Act.

3           Sec. 2. The Legislature finds that:

4           (1) Prosecutors are the most powerful actors in the criminal justice  
5 system. Among other things, prosecutors decide whether to charge people  
6 and what crimes to charge. Prosecutors determine, virtually unilaterally,  
7 whether individuals will be diverted from the criminal system, thereby  
8 avoiding criminal records and attendant collateral consequences.  
9 Prosecutors also make influential recommendations to judges regarding  
10 pretrial detention, bond, and sentencing. These and other decisions by  
11 prosecutors have a lasting impact on people accused of crime, victims,  
12 families, communities, and the budgets of the state and of local  
13 governments. Despite this great power, basic information and data about  
14 prosecutors' offices and their practices are generally difficult to  
15 access and to measure;

16           (2) All individuals, including voters who determine which  
17 prosecutors should hold elected office and taxpayers who fund these  
18 offices, deserve access to basic information about prosecutors'  
19 activities in a way they can understand and use, unless protected by a  
20 recognized privilege or statutory exemption.

21           (3) In addition to educating voters, the information that the  
22 Prosecutorial Transparency Act requires prosecutors to disclose will help  
23 identify the drivers of mass incarceration and racial disparities in  
24 Nebraska's criminal justice system. The information will improve  
25 accountability for offices that violate the law and individuals' rights  
26 and will help produce fairer outcomes in individual criminal cases,  
27 including via better-informed plea negotiations. It will also hasten  
28 improvements in prosecutors' offices themselves, creating management  
29 efficiencies and cost savings; and

30           (4) There is a compelling state interest in implementing uniform  
31 information transparency requirements for prosecutors' offices around the

1 state and making such information available to the public.

2 Sec. 3. For purposes of the Prosecutorial Transparency Act:

3 (1) Case number means the unique number assigned to a criminal case  
4 associated with a particular criminal charge;

5 (2) Charge means any formal accusation by a prosecutor of a  
6 violation of the criminal laws of this state or any political subdivision  
7 of this state, including, but not limited to, any felony, misdemeanor,  
8 infraction, traffic infraction, violation of a city or village ordinance,  
9 or violation of a county resolution. A charge includes such an accusation  
10 whether brought or filed by ticket, citation, information, complaint,  
11 indictment, or another charging instrument;

12 (3) Disposition means the conclusion of the prosecution of any  
13 charge and includes, but is not limited to, a decision not to charge,  
14 diversion, dismissal, dismissal as part of plea agreement, conviction as  
15 part of plea agreement, conviction at trial, acquittal, or any other  
16 disposition;

17 (4) Policy means any policy, procedure, guideline, manual, training  
18 material, direction, instruction, or other piece of information, whether  
19 formal or informal, and whether or not in writing, that contains any  
20 guidance whatsoever for employees of the prosecutor;

21 (5) Prosecutor means any city attorney, county attorney, or special  
22 prosecutor and the Attorney General; and

23 (6) Unique identifier means a randomly generated number that is  
24 assigned in place of a defendant's name.

25 Sec. 4. (1) For each case prosecuted, a prosecutor shall collect  
26 and provide to the Attorney General as provided in section 6 of this act  
27 the following data:

28 (a) Case number, indictment number, docket number, and unique  
29 identifier;

30 (b) The defendant's race and gender;

31 (c) Whether the defendant was a person with a disability, and if so,

1 whether such disability was mental or physical;

2 (d) The primary arresting or citing agency and other agencies  
3 involved in the arrest or citation;

4 (e) Charges listed by arresting or citing agency;

5 (f) If the prosecutor declines to prosecute the arrest or citation,  
6 the reason for such decision;

7 (g) Charges brought by the prosecutor, including any modifications  
8 and including any sentencing enhancement sought;

9 (h) Whether the defendant was deemed eligible for court-appointed  
10 counsel and the hearing of proceeding at which such determination was  
11 made;

12 (i) The following information regarding diversion: whether it was  
13 offered and if so, the date it was offered; whether the defendant agreed  
14 to participate; and the terms of any diversion;

15 (j) Any recommendation by the prosecutor on bail, bond, or the  
16 conditions of release;

17 (k) Whether the defendant was released on bail, bond, personal  
18 recognizance, or under other conditions of release pending trial, and if  
19 so, the dates of such release;

20 (l) The date range of any pretrial detention;

21 (m) The following information relating to pleas:

22 (i) Whether a plea was offered and if the offer had a time limit;

23 (ii) Terms of any plea offered, including dismissal of charges,  
24 charges pleaded to, charges covered by the plea but not part of the  
25 conviction, and any sentencing recommendations in the plea; and

26 (iii) Whether the plea was accepted or rejected;

27 (n) Whether discovery was provided to the defendant prior to any  
28 plea;

29 (o) The following information relating to disposition of the  
30 charges:

31 (i) Cases or charges dropped or dismissed by the prosecutor;

1       (ii) All charges the defendant was convicted of, if any, and whether  
2 such convictions were by plea, jury trial, or bench trial; and

3       (iii) If the case was dismissed by the court, the reason for  
4 dismissal;

5       (p) Type of sentence imposed, such as imprisonment or probation;

6       (q) The length of any sentence imposed, including any term of  
7 probation or post-release supervision;

8       (r) Any fines, fees, or restitution ordered; and

9       (s) Information regarding any associated forfeiture proceedings.

10       (2) A prosecutor shall collect and publish, as provided in section 5  
11 of this act, the policies of the prosecutor's office regarding:

12       (a) Decisions regarding charging, dismissals, and sentencing  
13 recommendations;

14       (b) Pretrial release and bail requests or recommendations;

15       (c) Plea bargains;

16       (d) Grand juries;

17       (e) Discovery;

18       (f) Witnesses;

19       (g) Whether to proceed in county or district court or in juvenile  
20 court;

21       (h) Fines and fees;

22       (i) Criminal and civil forfeiture;

23       (j) Screening for mental health and substance abuse;

24       (k) Domestic violence survivors;

25       (l) Pretrial diversion;

26       (m) Human resources, including, but limited to, hiring, evaluation,  
27 firing, promotion, and rotation among divisions or units;

28       (n) Internal discipline policies and procedures;

29       (o) Victims;

30       (p) Restorative justice;

31       (q) Training;

1       (r) Practices and procedures for tracking and responding to prison  
2 inmates' applications for parole or pardon; and

3       (s) Policies specific to vulnerable populations including, but not  
4 limited to, policies based on a person's immigration status, sexual  
5 orientation, or gender identity.

6       (3) If a prosecutor does not have a policy related to any of the  
7 topics listed in subsection (2) of this section, the prosecutor shall  
8 report such fact as provided in section 5 of this act.

9       (4) A prosecutor shall collect and publish, as provided in section 5  
10 of this act, the following information for every attorney employed in the  
11 prosecutor's office, with names and other personally identifying  
12 information redacted or replaced by an anonymizing identifier:

13       (a) Age;

14       (b) Gender;

15       (c) Race;

16       (d) Date hired;

17       (e) Title; and

18       (f) Disciplinary history.

19       (5) A prosecutor shall collect and publish, as provided in section 5  
20 of this act, the following information:

21       (a) Number of attorneys on staff;

22       (b) Cases handled per year per attorney;

23       (c) Number of attorneys who worked for the office in a temporary or  
24 contract capacity during the previous calendar year;

25       (d) Number of paralegals and administrative staff employed;

26       (e) Number of investigators utilized during the previous calendar  
27 year;

28       (f) Number of experts utilized during the previous calendar year,  
29 whether on staff or otherwise; and

30       (g) Number of police officers or detectives who work directly for  
31 the prosecutor.

1       (6) A prosecutor shall maintain a record of all information required  
2 to be collected and published by this section for at least five years.

3       Sec. 5. Beginning January 1, 2022, each prosecutor shall post on  
4 the prosecutor's web site the information described in subsections (2)  
5 through (5) of section 4 of this act. The information posted shall  
6 include the effective date of any policy or the date the information was  
7 gathered. Each prosecutor shall update the information required to be  
8 posted by this section at least once each year.

9       Sec. 6. (1) The Attorney General shall develop a set of uniform  
10 reporting requirements and procedures to receive the information  
11 described in subsection (1) of section 4 of this act. The Attorney  
12 General shall develop an implementation schedule and plan by which each  
13 prosecutor in the state shall report all such information to the Attorney  
14 General by January 1, 2024. The Attorney General may phase in compliance  
15 by prioritizing a subset of such information or by prioritizing reporting  
16 by prosecutors with larger caseloads. The implementation schedule and  
17 plan shall require that, on or before January 1, 2022, at least  
18 approximately thirty percent of such records be transmitted to the  
19 Attorney General and made available to the public as described in  
20 subsection (2) of this section.

21       (2) On or before May 1, 2022, and on or before each May 1  
22 thereafter, the Attorney General shall post the information collected  
23 under subsection (1) of this section on the Attorney General's web site.  
24 The information shall be posted in a modern, open, electronic format that  
25 is machine-readable, machine-searchable, and readily accessible to the  
26 public.

27       (3) On or before September 1, 2022, and on or before each September  
28 1 thereafter, the Attorney General shall produce an annual report that  
29 analyzes the information received from all prosecutors, comparing and  
30 contrasting the practices and trends among and between prosecutors in the  
31 state, and identifying any prosecutors which are not in compliance with

1 the Prosecutorial Transparency Act.

2 (4) The Attorney General shall also, from time to time, publish  
3 issue-specific reports that provide a deeper analysis of one or more  
4 areas of prosecutorial decisionmaking. At least one such report shall  
5 focus on racial disparities in a particular aspect of prosecutorial  
6 decisionmaking.

7 Sec. 7. (1) A prosecutor shall not include any individually  
8 identifying information regarding a defendant in any information  
9 collected or published under the Prosecutorial Transparency Act.

10 (2) The Attorney General shall not include any individually  
11 identifying information of any defendant in any information published  
12 under the Prosecutorial Transparency Act.

13 Sec. 8. (1) There is hereby created a Prosecutorial Transparency  
14 Advisory Board. The board shall consist of seven members appointed by the  
15 Governor. At least two of the members shall be public defenders or  
16 criminal defense attorneys. At least two of the members shall be persons  
17 with direct personal experience as criminal defendants in Nebraska.

18 (2) The Governor shall appoint the initial members by December 1,  
19 2021. The Governor shall stagger the terms of the initial appointments so  
20 that two members serve for a term of one year, two members serve for a  
21 term of two years, and three members serve for a term of three years.  
22 Thereafter members shall serve for terms of three years. Members may be  
23 reappointed.

24 (3) The advisory board shall meet with the Attorney General from  
25 time to time but no less often than once per calendar quarter. The  
26 advisory board shall provide the Attorney General with input and guidance  
27 on carrying out the Prosecutorial Transparency Act.

28 (4) Members of the advisory board shall receive no compensation for  
29 their services as such but shall be reimbursed for expenses incurred in  
30 the performance of their official duties as provided in sections 81-1174  
31 to 81-1177.



1           Sec. 9. If a prosecutor fails, in a material manner, to comply with  
2 the Prosecutorial Transparency Act, such prosecutor shall be ineligible  
3 to receive loans, grants, funds, or donations administered by the  
4 Attorney General or the Nebraska Commission on Law Enforcement and  
5 Criminal Justice until the Attorney General determines that such material  
6 failure has been corrected.

7           Sec. 10. The Attorney General may adopt and promulgate rules and  
8 regulations as necessary to carry out the Prosecutorial Transparency Act.

9           Sec. 11. If any section in this act or any part of any section is  
10 declared invalid or unconstitutional, the declaration shall not affect  
11 the validity or constitutionality of the remaining portions.