
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Steven Bradford, Chair
2021 - 2022 Regular

Bill No: AB 2418 **Hearing Date:** June 28, 2022
Author: Kalra
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Urgency: No **Fiscal:** Yes
Consultant: AB

Subject: *Crimes: Justice Data Accountability and Transparency Act*

HISTORY

Source: American Civil Liberties Union
Congregations Organized for Prophetic Engagement (COPE)
Prosecutor's Alliance California
San Francisco District Attorney's Office
Yolo County District Attorney's Office

Prior Legislation: AB 2524 (Irwin), Ch. 418, Stats. of 2016

Support: California Public Defenders Association; Center on Juvenile and Criminal Justice;
Ella Baker Center for Human Rights; Oakland Privacy; Smart Justice California

Opposition: California Law Enforcement Association of Records Supervisors

Assembly Floor Vote: 51 - 15

PURPOSE

The purpose of this bill is to require state and local prosecution offices, after a determination of technological readiness, to collect and transmit various data regarding criminal cases to the Criminal Justice Statistics Center (CJSC) within the Department of Justice (DOJ), which would be required to aggregate, verify and publish the data. Additionally, the bill requires CJSC to establish the Prosecutorial Transparency Advisory Board, as specified.

Existing law provides that it is the duty of the DOJ to:

- Collect data necessary for the work of the department from specified persons and agencies as specified and from any other appropriate source;
- Prepare and distribute to all those persons and agencies cards, forms, or electronic means used in reporting data to the department;
- Recommend the form and content of records that must be kept by those persons and agencies in order to ensure the correct reporting of data to the department;

- Instruct those persons and agencies in the installation, maintenance, and use of those records and in the reporting of data therefrom to the department;
- Process, tabulate, analyze, and interpret the data collected from those persons and agencies;
- Supply to federal bureaus or departments engaged in the collection of national criminal statistics data they need from this state at their request;
- Make available to the public, through the department's OpenJustice Web portal, information relating to criminal statistics, to be updated at least once per year.
- Periodically review the requirements of units of government using criminal justice statistics, and to make recommendations for changes it deems necessary, as specified. (Pen. Code, § 13010.)

Existing law requires DOJ to collect data pertaining to the juvenile justice system for criminal history and statistical purposes. (Pen. Code, 13010.5.)

Existing law provides that the information published on the OpenJustice Web portal shall contain statistics showing all of the following:

- The amount and the types of offenses known to the public authorities;
- The personal and social characteristics of criminals and delinquents;
- The administrative actions taken by law enforcement, judicial, penal, and correctional agencies or institutions, including those in the juvenile justice system, in dealing with criminals or delinquents; and,
- The administrative actions taken by law enforcement, prosecutorial, judicial, penal, and correctional agencies or institutions, including those in the juvenile justice system, in dealing with minors who are the subject of a petition in the juvenile court to transfer their case to an adult criminal court or whose cases are directly filed or otherwise initiated in an adult criminal court.
- Specified data regarding civilian complaints. (Pen. Code, § 13012(a).)

Existing law provides that the DOJ shall give adequate interpretation of the above statistics and present the information so that it may be of value in guiding the policies of the Legislature and of specified criminal justice system actors. This interpretation shall be presented in clear and informative formats. (Pen. Code, § 13012(b).)

Existing law provides that the DOJ shall maintain a data set, updated annually and made available on the OpenJustice Web portal, which contains the number of crimes reported, number of clearances, and clearance rates in California as reported by individual law enforcement agencies. (Pen. Code §13013.)

Existing law imposes a duty on every person or agency dealing with crimes or criminal defendants or with delinquency or delinquent minors, when requested by the Attorney General:

- To install and maintain records needed for the correct reporting of statistical data required by him or her;
- To report statistical data to the department at those times and in the manner that the Attorney General prescribes; and,
- To give to the Attorney General, or his or her accredited agent, access to statistical data for the purpose of carrying out this title. (Pen. Code, § 13020.)

Existing law provides that notwithstanding specified provisions of existing law, every public agency or bona fide research institution concerned with the prevention or control of crime, the quality of criminal justice, or the custody or correction of offenders may be provided with criminal offender record information, including criminal court records, as required for the performance of its duties, including the conduct of research. (Pen. Code §13202.)

This bill establishes several legislative findings and declarations, including, in part:

- It is the intent of the Legislature to create a workable system of criminal justice data transparency whereby law enforcement prosecution agencies will gather complete, accurate, and timely data in a uniform format, and make that data available to the public in a modern, open, electronic format that is machine-readable and readily accessible through an application program interface.
- The Legislature finds that it is an important state interest to implement a data collection, aggregation, and publishing process for criminal prosecutions to promote criminal justice data transparency.
- It is the intent of the Legislature to create a reliable and robust methodology that is consistent county-to-county so that statewide data and trends may be accurately tracked [and to] set low technological and resource barriers so that every affected office may meaningfully participate to the fullest intent of this bill.
- The expediency and accuracy of the data is best served by the Criminal Justice Statistics Center, hereinafter CJSC, as a single data aggregator and repository unit.

This bill establishes several objectives and mandate for CJSC, including:

- The collection of specified data elements from state and local prosecutor offices, as specified. Under this provision, CJSC shall develop consistent and clear guidelines for how agencies are to define data elements transmitted to DOJ.
- The transmission, aggregation and verification of data elements, as defined.
- The development and publication of metrics, as defined, and ensuring that personal identifying information is not published except as allowed by law.

- The assessment of the technological readiness as well as agency attitudes or technological culture of each agency for the purposes of compliance with this bill's requirements. Under this provision, CJCS shall designate each agency to be in one of three tiers of readiness, with Tier 1 being most prepared and Tier 3 being least prepared.

This bill requires CJSC to do all of the following in carrying out its objectives and mandate:

- Use standardized practices in developing web pages, as specified;
- Employ appropriate security measures and best practices to account for personal identifying information and other sensitive information as governed by law;
- Use technology that is scalable so as to accommodate large increases in volume of data;
- Staff personnel familiar with web user-interface coding and web service coding;
- Make all data available, including raw data elements and metrics, in formats that will allow for download of complete data sets;
- Make all data available in a searchable format;
- Assess and create processes to collect, aggregate, and validate data elements transmitted by an agency to include methods to identify duplicate, overlapping or missing data;
- Test data quality;
- Develop methods for archiving data, retrieving archived data, and data editing and verification; and,
- Develop standardized definitions for "data elements" so that the information transmitted to CJSC is uniform across all jurisdictions.

This bill requires CJSC, by March 1, 2023, to establish the Prosecutorial Transparency Advisory Board for the purpose of ensuring transparency, accountability, and equitable access to prosecutorial data, whose primary responsibilities are to provide guidance to CJSC on draft rules, regulation, policies, plans, reports, or other decisions made by CJSC with regard to the bill.

This bill specifies the composition of the Prosecutorial Transparency Advisory Board.

This bill provides that beginning on an unspecified date, every agency statewide shall begin collecting specified data elements, and shall transmit them on distinct, unspecified dates depending on what tier they are placed in.

This bill requires CJSC to start collecting data elements based on the unspecified timetable for the three tiers and publishing it on yet to be determined dates, as specified.

This bill allows CJSC to obtain information from sealed and expunged records and in other circumstances that may normally be prohibited from being disclosed, but provides that CJSC

cannot publish the name, birthdate, or the criminal identification and information or state identification number assigned to any defendant or victim.

This bill provides that for each case, as defined, each prosecuting agency shall collect the following data elements:

- The court case numbers, but to protect the privacy of defendants this number shall not be included in the published data;
- The internal case number assigned to each case by the case management system. If the prosecuting agency does not currently use an internal case number, the agency shall do so;
- The status of the case, specifically, whether the case is pending, concluded, is on appeal; or is inactive, such as when the defendant is in warrant status;
- The zip code where most of the acts comprising the case occurred;
- The date the crime was committed;
- The name and originating agency identifier, as designated by the National Law Enforcement Telecommunications System, of the law enforcement agency that investigated the case for submission to the prosecutor;
- Each charge and enhancement, including any special circumstances or special allegation, including a uniform description, statute, and classification as a felony or misdemeanor;
- The date on which charges were filed, the case was discharged, or the case was returned for further investigation;
- Each charge, enhancement, and special circumstance and special allegation in the initial charging document;
- For each case declined to prosecute, the charges rejected and the reason for the declination to prosecute;
- The county in which the case was filed;
- The date on which the defendant initially entered a plea to the charges;
- The date on which the defendant first appeared in a case, whether or not an arraignment took place;
- The date on which bail was set and the amount of bail;
- The agency pretrial release recommendation for each case and a brief rationale;
- The prosecutor's bail recommendation and a brief rationale;

- The court pretrial detention determination at arraignment;
- Whether the defendant paid bail and what portion of the bail was paid;
- The date of any release from custody, the reason for the release, and the terms of the release;
- The start and end date for every period of detention in the case, including pretrial detention, and the reason for that detention;
- The date of any amendments to the accusatory pleading and the charges, enhancements, special circumstances or special allegations added;
- The date on which the first plea bargain offer was made;
- Whether the prosecutor determined that the defendant was eligible for diversion and whether the defendant was offered a diversion program by the prosecuting agency;
- Whether the court granted or denied a motion for diversion;
- Whether the prosecutor opposed diversion, and if so, the reason for the opposition based on specified standardized terms;
- Whether the defendant participated in diversion, and if so, the date of completion of the program, and whether or not the program was successfully completed;
- The type of diversion;
- Whether the prosecutor determined that the defendant was eligible for a collaborative court program, as defined;
- Whether the court granted or denied a motion for participation in collaborative court;
- Whether the prosecutor opposed the defendant's participation in collaborative court, and if so, the reason for the opposition based on specified standardized terms;
- Whether the defendant agreed to participate in a collaborative court program;
- The date on which a collaborative court program ended, and whether it was successfully completed;
- The type of collaborative court program;
- The date on which a charge was resolved, whether by dismissal, acquittal, conviction, or other grounds;

- The disposition of each charge, enhancement, special circumstance, and/or special allegation;
- For any special circumstance related to murder whether the defendant was the actual killer;
- Whether any conviction was by trial or plea;
- The date of sentencing and the sentence imposed, including any restitution, fines, and period of incarceration;
- Whether or not the prosecuting agency engaged in any post-conviction resentencing and the outcome of that resentencing;
- Whether or not the agency participated in parole proceedings, and if so, the formal recommendation; the outcome of the proceedings, and the race of the incarcerated person;
- Whether or not the prosecuting agency engaged in any commutation or pardon proceedings, the agency's recommendation, and the outcome;
- Whether there was a *Batson/Wheeler*¹ motion made, the party making the motion, and the ruling;
- Whether a criminal informant was used and whether the informant was used in a custodial setting, as specified;
- Whether there were competency proceedings initiated in the case;
- Whether the last attorney of record was a public defender, privately retained, or whether the defendant represented him or herself;
- Whether the defendant plead not guilty by reason of insanity;
- Whether conservator proceedings were initiated;
- Specified information for each defendant, including: name; date of birth; age; race; ethnicity; specified identification numbers; disability, if any; gender; whether the defendant has self-identified as transgender, non-binary, or intersex; county of residence; whether the defendant was on any type of supervision when the charged offense was committed; whether defendant is subject to sex offender registration requirements; and,

¹ Prohibits the use of peremptory challenge to remove a prospective juror on the basis of the prospective juror's race, ethnicity, gender, gender identity, sexual orientation, national origin, or religious affiliation, or the perceived membership of the prospective juror in any of those groups. (*Batson v. Kentucky* (1986) 476 U.S. 79; *People v. Wheeler* (1978) 22 Cal.3d 258.)

- Specified information for each victim, if any, including: whether there was a victim identified, race, ethnicity, age at the time of the crime, gender identification, and whether the victim requested that the charges be dropped, and willingness to testify.
- Any additional data element the participating agency chooses to designate, as specified.

This bill provides that each prosecuting agency that only has select divisions that prosecute crimes must provide the following information each year by July 1:

- The number of full-time attorneys who carry non-appellate criminal caseloads;
- The number of part-time attorneys who carry non-appellate criminal caseloads;
- The number of investigators;
- The average felony caseload for attorneys who carry non-appellate criminal caseloads;
- The average misdemeanor caseload for attorneys who carry non-appellate criminal caseloads;
- The office limits regarding the number of felony cases and the number of misdemeanor cases an attorney can carry over a one-year period; and,
- The number of victims that the victim's services unit contacted and provided services to, as specified.

This bill requires DOJ to report the following to CJSC with regard to each defendant in the cases identified and reported by a prosecuting agency:

- The number of prior felony convictions and statutory charges comprising prior felony convictions;
- The number of prior felony arrests;
- The number of misdemeanor arrests and convictions and statutory charges comprising misdemeanor convictions;
- Whether an appeal was filed following the disposition of the case; the basis for the appeal; whether the appeal was contested; and the resolution of the appeal; and,
- The criminal identification and information number and/or state identification number assigned to each defendant with respect to the information above.

This bill includes findings and declarations related to the public's right of access to the meetings of public bodies or the writings of public officials, and declares that its provisions further the need to protect the privacy of individuals arrested for and prosecuted for crimes while balancing the public's right to access.

This bill provides that the operation of its provisions is contingent upon an appropriation by the Legislature.

COMMENTS

1. Need for This Bill

According to the Author:

District attorneys are constitutionally elected county officials responsible for the prosecution of criminal violations of state law and county ordinances. They not only determine the crimes with which people are charged, but also play a central role in whether people are detained or released pretrial, whether people are convicted of the crimes they were charged with, which sentences people receive, how people's prior criminal history may impact their treatment in the system, and who is in prison and jail. Despite the extraordinary power they wield, elected district attorneys report very little public data on critical decisions such as charging rationale, the length of time it takes for a case to move through the criminal justice process, and the number of certain crimes that have been charged, to name a few examples. This lack of transparency has only allowed racial bias to proliferate within the criminal legal system.

2. Criminal Justice Data in California

California has long been a national leader on criminal justice reform and innovation, but only in the last several years has the state refocused its attention to aggregating and publishing crime data for the purposes of self-assessment and transparency. Recent efforts to modernize statewide systems of data collection and representation began in earnest with the DOJ's creation of the OpenJustice portal in 2015, and the Legislature's passage of the OpenJustice Data Act of 2016 (AB 2524, Irwin, Ch. 418, Stats. of 2016).² These reforms leveraged statistical data maintained by the DOJ and other public datasets to create a dynamic, user-friendly dashboard that presented crime statistics in a more digestible format.³ Local government's followed the state's lead in embracing data transparency. According to the author, "in 2018, the San Francisco DA became the first prosecutor's office in California and the second in the country to launch public data dashboards on arrests presented, cases prosecuted, and trials," and "in 2021, Yolo County District Attorney, Jeff Reisig, launched "Commons," a publicly accessible website offering information on race, age, gender, and other data points related to criminal cases in Yolo County."

Despite these reforms, critics argue that the state's data transparency policies remain flawed on many fronts. A recent report from Stanford Law School's Criminal Justice Center highlighted the deficiencies of the current system:

In stark contrast to California's culture and history, its criminal justice data are not readily available to the public. There is also significant confusion among practitioners and local policy makers about what data can be shared and with whom. This

² Existing law prior to these actions required DOJ to collect and present crime statistics from local jurisdictions to the Legislature (see Penal Code §§ 13010 et. seq), but many believed that differences in local data reporting and the static, point-in-time publication process rendered that framework inadequate.

³ The portal can be accessed here: <https://openjustice.doj.ca.gov/>

confusion creates daunting barriers to criminal justice data sharing and, in turn, needed criminal justice research. In addition, differing legal interpretations regarding whether court records fall within the Criminal Offender Record Information (CORI) statutory scheme create ambiguity regarding access to criminal court records from California Superior Courts, despite court records being presumptively open to the public. In particular, California Rules of Court are regularly interpreted to limit—and often prevent—the sharing of court records, without any exceptions for bona fide research efforts. This means that researchers and the public are already fighting an uphill battle to access criminal justice data before they even start. [...] Numerous research efforts have been stymied by gaps in criminal justice data infrastructure, varying interpretation of data sharing laws and regulations, or both. Collectively, these challenges translate to both missed opportunities and concerning roadblocks to transparency.⁴

Among the findings of the report were that the DOJ’s “data responsibilities are under resourced and thus unduly subordinated to the Department’s other responsibilities,” and that “local jurisdictions have widely varying data infrastructure, with some using robust electronic case management systems and others still using paper case files.”⁵ This bill seeks to address these and other issues related to California’s data collection and transparency systems.

3. Effect of This Bill

Existing law requires the California Attorney General to collect and analyze statistical data on crime and the criminal justice system, and report this data to the Legislature and to the public.⁶ This duty is primarily executed by the DOJ’s Criminal Justice Statistics Center (CJSC), which collects, analyzes, and develops statistical reports and information to provide valid measures of crime and the criminal justice process in California. To fulfill this duty, CJSC collects and compiles data from more than 1,000 city, county, and state criminal justice agencies in California.⁷ Despite these expansive duties, CJSC is hardly mentioned in the Penal Code or Government Code, and thus does not have any statutorily defined duties or mandates.

This bill creates a new framework of data collection and reporting by California’s criminal prosecution agencies, and establishes several objectives and mandates for CJSC related to that effort and publishing the data collected. Specifically, this bill requires every prosecution agency in California to collect specified data elements, and transmit them to CJSC in a standardized format as prescribed by CJSC. In order to account for differences in technological readiness across California’s numerous prosecuting agencies, the transmission of this data will occur on a staggered timetable, with agencies broken into various tiers depending on their relative capabilities. Tier 1 agencies – those with the highest level of readiness – would report first, followed by Tier 2 and Tier 3 agencies. Currently, the bill does not specify the exact dates on which each tier would be required to begin transmission of the data. According to the author and

⁴ Rabinowitz, Mikaela, et. al. “The California Criminal Justice Data Gap.” *Stanford Criminal Justice Center and Measures for Justice*. Published April 2019.

https://www.measuresforjustice.org/about/docs/California_Data_Gap_Report.pdf

⁵ *Id.* at 3.

⁶ As mentioned in footnote 1, the DOJ’s existing data-related requirements can be found at Penal Code §§13010 et seq.

⁷ For more information, see <https://oag.ca.gov/sites/all/files/agweb/pdfs/cjsc/rptreq.pdf>

sponsors, conversations with prosecuting agencies regarding this timetable are still ongoing. Upon receiving the data, CJSC is required to aggregate, verify and publish them. Again, the publication timetable is unspecified in the bill. CJSC is also required to develop data metrics and assist prosecuting agencies in achieving technological readiness.

In addition to creating this framework for collecting and publishing data from prosecution agencies, this bill also requires CJSC to establish the “Prosecutorial Transparency Advisory Board” (PTAB) within the DOJ by March 1, 2023. Under the bill, the PTAB is charged with ensuring transparency, accountability, and equitable access to prosecutorial data, and providing guidance to CJSC on all draft rules, regulations, policies, plans, reports, or other decisions. The bill also specifies the composition of the 19-member board, which must include representatives from various relevant organizations, data experts, civil rights experts, crime victims, the Attorney General (or designee) and others.⁸ Beyond these enumerated duties and membership requirements, the bill does not specify any additional rules or parameters for PTAB, such as meeting schedules, appointing entities or reporting requirements. The Author and Committee may wish to consider providing additional statutory guidance for PTAB.

4. Practical Considerations

This bill requires prosecution agencies to collect at least 56 discrete data elements for eventual transmission to CJSC, some of which have several sub-elements. The collection, transmission, verification and publication of this data, as well as the attendant coordination and guidance they require, constitutes a gargantuan effort that is sure to take several years and a significant amount of labor and financial resources. While some agencies, such as the SFDA or Yolo DA, may already have the processes and infrastructure in place to collect and transmit these elements, most agencies subject to this bill likely do not. Many agencies in smaller jurisdictions still use paper files to record case information and only digitally record a fraction of the data elements required under the bill. Even in larger jurisdictions, many agencies use a hybrid of paper records and computer systems, which may be outdated and incompatible with CJSC’s data processing technology. It should also be noted that several of the data elements may not currently be collected or recorded by agencies at all, and are instead primarily recorded by the courts. Requiring prosecutors to track all of the required data elements, some of which would in practice be mentioned rapidly in a court proceeding, and others which might only consist of a small notation on a page, may be unduly burdensome. The Author may wish to examine whether prosecuting agencies currently have the ability or duty to collect the elements enumerated in the bill.

5. Author’s Amendments to be Taken in Committee

The Author plans to accept amendments to the bill in committee reflecting internal sponsor discussions and feedback from DOJ. Specifically, the amendments remove all references to CJSC in the bill and instead refer to the Department of Justice, in order to account for potential organizational changes at the Department. The amendments also clarify several of the data elements.

⁸ Organizations required to have representatives on the board include the California Public Defenders Association, California District Attorneys Association, and the Prosecutors Alliance.

6. Argument in Support

According to the Center on Juvenile and Criminal Justice:

Prosecutors have significant authority within the justice system. They decide who will be charged, what they will be charged with, and what plea deals are available to defendants. These key decisions affect the outcomes of thousands of criminal cases each year but are made with little transparency. Government agencies and researchers are unable to access basic prosecution data that would inform a thorough study of prosecutor decision-making or the broader justice system. As an organization that works with justice system data every day, we have found significant gaps in the information available around charging decision and plea deals.

AB 2418 helps to close these gaps by requiring district attorneys to report certain case information to the Department of Justice (DOJ), which will receive and aggregate data from across the state. This includes demographic information, case number, date of the crime and arrest, data about the charges such as enhancements, court appearances, case disposition information, plea bargains, and whether diversion was offered. Currently, this information is not available for broader study or comparison across jurisdictions.

AB 2418 also requires DOJ to provide clear reporting guidelines, as well as use industry-appropriate methods to verify the information collected is accurate and can be used to draw comparisons. Additionally, the bill places counties into varying tiers depending on their technological readiness to ensure that all agencies can comply with the law. Finally, AB 2418 requires DOJ to establish a Prosecutorial Transparency Advisory Board to ensure transparency, accountability, and equitable access to prosecutorial data. AB 2418 will bring much-needed accountability to prosecutors' offices and will be instrumental in identifying and addressing racial and ethnic disparities.

7. Argument in Opposition

According to the California Law Enforcement Association of Records Supervisors:

We believe the stated goals of AB 2418, transparency and accountability, are already accomplished under existing law, which require local criminal justice agencies to collect a core set of data elements necessary for tracking how people and cases move through the criminal justice process. This data is already standardized and housed in a single, centralized data repository in the DOJ. Furthermore, should a locality decide that the current repositories of shared law enforcement data is inadequate, nothing in law prevents a law enforcement agency in collaboration with the district attorney to create a publicly accessible website, for the benefit of their community. It's not clear what relevant, useful, and comparable criminal justice data would be gathered by this heavy-handed mandate that would result in more effective law enforcement practices and improved transparency and accountability.