



TESTIMONY IN SUPPORT OF SENATE BILL 343

Reconstitution of Task Force to Study Transparency Standards for State's Attorneys

TO: Members of the House Judiciary Committee

FROM: Center for Criminal Justice Reform, University of Baltimore School of Law

DATE: March 21, 2025

My name is Heather Warnken, and I serve as Executive Director of the University of Baltimore School of Law's Center for Criminal Justice Reform. The Center supports community driven efforts to improve public safety and address harm and inequity caused by the criminal legal system. In 2023, I was honored to be appointed by Governor Wes Moore to serve on the Task Force to Study Transparency Standards for State's Attorneys created through legislation passed in the Maryland General Assembly the previous year.

In direct alignment with our Center's mission and commitment to the important goals of this Task Force, I am grateful to testify in support of SB 343.

Prosecutors are widely understood to be among the most powerful actors in the criminal justice system. They wield tremendous authority and discretion to define, pursue—or decline to pursue—criminal cases. They decide what charges to bring, when and what plea offers to make, and determine numerous other decision points that impact the lives and liberty of not just people who are accused of crimes, but their loved ones, their communities, and society writ large.

Many of these discretionary decisions happen behind closed doors with little to no scrutiny or awareness by outside entities, including voting members of the public who put elected state's attorneys in office, or remove them if they are unhappy with their performance or policies. Notwithstanding laws on the books, and whatever evidence may or may not be available in a particular case, numerous other factors also may impact prosecutorial decisions and outcomes, such as an office's current resource availability, policy priorities, and more.

A groundswell of energy and investment in the need for data-driven systemic reforms

Over the past decade, the role of prosecutors' decision-making in driving racial, socio-economic, and other disparities in the criminal justice system has received greater attention and examination. Maryland's extreme racial disparities in incarceration, and in particular its status as first in the nation in over-incarceration of Black males, led to the launch of the Maryland Equitable Justice Collaborative (MEJC) in October 2023. This historic initiative, led by the Maryland Office of the

Attorney General and Office of the Public Defender in partnership with a large diversity of community and system stakeholders, seeks to address urgent issues of mass incarceration, the policies and practices behind it, particularly those impacting Black men and other marginalized groups.

Earlier this year, after a rigorous deliberative and research-backed process, MEJC approved its first set of policy recommendations, including, *“Conduct a qualitative and quantitative analysis of each step in the criminal legal process – from arrest to parole – to understand the impact of racial and geographic disparities in Maryland’s adult prison population.”* This month MEJC released its first full report expanding upon the need for this and its full set of recommendations, and charting a path forward. SB 343 aligns with these goals.

Beyond Maryland, given the growing evidence surrounding these systemic challenges, and mounting interest across diverse, bipartisan constituencies on how to promote efficiency and fairness in the justice system, a proliferation of prosecutorial-focused resources has emerged across the United States. This includes the Vera Institute’s Reshaping Prosecution Initiative and dedicated nonpartisan centers such as the Institute for Innovation in Prosecution at John Jay College of Criminal Justice. There is a strong bipartisan movement to help guide more effective, equitable practices, confronting long-standing criminal justice policies and practices with new lenses and tools. There is growing recognition that “the way we’ve always done it” is not sufficient justification for how to proceed.

Reconstituting the Task Force to Steward an Effective Approach

Much like the legislation that created the Task Force, SB 343 is another important, albeit quite modest, step forward in increasing transparency and accountability for this critical component and set of actors in the criminal legal system. It extends the life of the Task Force to help continue to examine these issues and help to steward an effective path forward.

It expands and diversifies the Task Force membership to include needed perspectives previously omitted, including the voice of the Maryland Office of the Public Defender (OPD). OPD brings critical knowledge surrounding the practical intricacies of case processing and the feasibility, needs and opportunities of enhanced transparency and accountability across the state. In representing the vast majority of adults and children accused of crimes and interfacing daily with state’s attorneys, OPD will have the ability to engage with practical and theoretical questions at the heart of the Task Force’s work and in a way that many among our existing membership who are not practicing criminal defense attorneys could not.

A cadre of diverse Maryland counties and bipartisan elected State’s Attorneys are successfully pursuing data collection efforts and uplifting why it matters

Four jurisdictions have launched efforts to share case metrics not typically available to the public. Initiatives underway in Baltimore City and Charles, Frederick and Montgomery counties are done in partnership with Prosecutorial Performance Indicators (PPI) and in consultation with researchers from top universities, made possible through grant funding. As part of collaborative agreements, the offices have committed to publish their findings regardless of what the data reveals, address any racial injustices, and ensure more fairness and equity. In exchange, they receive free expert help setting up their systems and data analysis provided by leading experts.

- **Montgomery County** was the first in the state to launch an online dashboard in October. “The website shows five years of metrics on guilty pleas rates by race, case types and resolutions, and breaks down demographics of defendants and victims by race and gender. “I am not afraid for the community to see how we arrive at our decisions and how we evaluate our cases,” State’s John McCarthy said. “I think we are accountable to them.” McCarthy said the data analysis exposed him to different ways of looking at cases. For example, he said he started to question the efficiency of making multiple charges when most convictions end with a defendant pleading guilty to only one or two offenses. He also became curious whether the number of charges varied by race. “You’re beginning to analyze your data differently than you did before in terms of overall efficiency,” he said.”¹
- **Charles County:** Still in the early phases, State’s Attorney Covington said “he’s looking forward to seeing “what this data can tell us about how we’re doing our job and making sure we’re doing it as fairly as possible.”²
- **Baltimore City:** Baltimore City is also in the process of reworking a legacy dashboard with PPI. “We have a duty to uphold public trust and ensure that our actions are visible and accountable to the communities we serve,” said James Bentley, spokesperson for Baltimore State’s Attorney Ivan Bates.³
- **Frederick County:** as reported in the Banner, Frederick County State’s Attorney’s Office recently noted case data as a powerful management tool. “Keeping an eye on attorney work loads could help make a case for more positions, prevent staff burnout and

¹<https://www.thebaltimorebanner.com/politics-power/state-government/maryland-states-attorneys-data-access-3BBFYZFNVZEVVRKP5VABUVC6KCI/>.

²<https://www.thebaltimorebanner.com/politics-power/state-government/maryland-states-attorneys-data-access-3BBFYZFNVZEVVRKP5VABUVC6KCI/>.

³<https://www.thebaltimorebanner.com/politics-power/state-government/maryland-states-attorneys-data-access-3BBFYZFNVZEVVRKP5VABUVC6KCI/>.

retain experienced attorneys. Another critical component will be giving constituents accurate statistics so they can know what's happening in their communities rather than what they're absorbing on the news or on social media.”⁴

SB 343 is well within the norm of states' approaches across the country

The Task Force Final Report includes a helpful *Appendix 2. Transparency Measures for Prosecutors Required by Legislation Nationwide*.⁵ At least eight states, including AZ, CA, CO, CT, FL, MN, NJ, UT have passed legislation requiring data collection and transparency from their prosecutors. Other states have established offices and/or programs devoted to providing technical assistance to prosecutors to support this important work. For example,

- Colorado passed legislation creating and funding the Colorado Integrated Criminal Justice Information System, a centralized state-wide data system that provides technical support to offices in maintaining data standards.⁶ A recent report on the program speaks to their key findings: “(1) *Staff in DA offices have benefited from—and continue to see the value in— increased access to information about the office as a whole. (2) Staff in DA offices continue to believe in the importance of community engagement, and, since the start of the project, more strongly believe in transparency efforts. (3) Staff in DA offices remain mixed on their perceptions of racial/ethnic disparities in the justice system.*”⁷
- The Prosecuting Attorneys Association of Michigan develops software and helps offices with technical matters. Developing a similar centralized support system for Maryland state’s attorneys could help with standardizing data collection and ease implementation of the legislation.⁸

Numerous critical debates over public safety philosophy and outcomes continue, and new ones emerge and are revisited through evolving societal standards and challenges. This includes, for example, how do we most effectively address the crisis of abysmal clearance rates for serious violent crime, and the disturbing racial disparities in these outcomes based on the race of the victim? How do we decisively determine whether it is helpful or counterproductive for public

⁴<https://www.thebaltimorebanner.com/politics-power/state-government/maryland-states-attorneys-data-access-3BBFYZFNVEVRKP5VABUVC6KCI/>.

⁵ https://mgaleg.maryland.gov/Pubs/CommTFWorkgrp/2023-TSS_Final_Report.pdf (page 9).

⁶ Colorado Integrated Criminal Justice Information System homepage, accessed February 22, 2022, <https://cicjis.colorado.gov/>.

⁷ https://coloradolab.org/wp-content/uploads/2024/06/Colorado-Prosecutorial-Dashboards_Project-Survey-Results_2023.pdf

⁸ Prosecuting Attorneys Association of Michigan homepage, accessed February 22, 2022, <https://www.michiganprosecutor.org/>.



safety to allocate finite prosecutorial resources and attention to the pursuit in the criminal legal system of “quality of life” crimes?

These big and urgent public safety questions deserve data to inform them, and they should not be left determined solely by the muscle memory of the system, instinct, or anecdotes. Our center seeks to follow the data and understand that data through the lens of directly impacted people and other stakeholders. In that pursuit we are consistently challenged by the numerous areas in criminal justice where we all, as policymakers, practitioners, researchers and the public, are harmed and stifled when needed information is insufficient, inconsistent, delayed, or a downright black box. Our communities, who fund state’s attorneys’ offices, and especially those who bear the brunt of our public safety challenges and systemic inequities, deserve so much more.

SB 343 is about taking the needed next steps in addressing this for one of the most powerful, high stakes decision-makers in the system. This work is needed to promote equity and systemic legitimacy, and to support and assist prosecutors in allocating limited resources in effective, efficient ways.

Furthermore, we urge the sponsors and committee to continue working expeditiously toward mandatory data reporting standards and requirements and expanding the list of data points to be collected beyond those identified in the initial Task Force report. The initial Task Force recommendations represent only the first steps and the floor for what may be required in achieving the level of transparency and accountability in criminal justice decision-making and operations that the residents of Maryland deserve.

We urge a favorable report.