



**TESTIMONY IN SUPPORT OF SB 617**

**Task Force to Study Transparency Standards for State’s Attorneys and the State’s Attorney Case Management System Grant Fund**

TO: Members of the Senate Judicial Proceedings Committee

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

DATE: February 9, 2024

My name is Heather Warnken, and I am the Executive Director of the University of Baltimore School of Law’s Center for Criminal Justice Reform. The Center for Criminal Justice Reform 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 my commitment to the important goals of this Task Force, I am grateful to testify in support of SB 617.**

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 - criminal cases. They decide what charges to bring, when and what plea offers to make, and numerous other decision points which 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 often fully discretionary decisions happen behind closed doors with little to no scrutiny or awareness by outside entities. This includes voting members of the public who put elected state’s attorneys in office, or remove them if they are unhappy with public safety results. 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, such as an office’s current resource availability, policy priorities, and more.

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 of first in the nation in over-incarceration of Black males, led to the launch in October 2023 of the



Maryland Equitable Justice Collaborative. This historic new initiative, led by the 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 and the policies and practices behind it, particularly impacting Black men and other marginalized groups.

Beyond Maryland, given the growing evidence surrounding these profound challenges, and mounting concern across diverse constituencies on how to solve them, across the United States a proliferation of prosecutorial-focused resources and dedicated centers such as the Institute for Innovation in Prosecution at John Jay College of Criminal Justice, have emerged in recent years. There is a strong bipartisan movement to help guide more effective, equitable practice, confronting long-standing criminal justice policies and practices with new lenses and new tools. There is growing recognition that “they way we’ve always done it” is not sufficient justification for how to proceed.

Much like the legislation that created the Task Force, SB 617 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 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 defense attorneys could not.

SB 617 will also advance the long road of culture change toward quality, consistent data collection at both the individual office and state level. As we learned through various presentations throughout the Task Force meetings, many state’s attorneys’ offices lack the infrastructure and capacity to consistently collect and publicize these data. Even in the small number of counties which make any of this information publicly available, it may be limited and difficult to interpret. The grant program established through this legislation is designed to address that, both for the offices whose outdated case management systems need improvement, and for the alarming number of counties that currently have no case management system at all.



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 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 should not be left determined solely by the muscle memory of the system, instinct, or anecdotes. Our center seeks everyday 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 system inequities, deserve so much more.

SB 617 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 and effective, efficient ways. We urge a favorable report.

Furthermore, we urge the sponsors and committee to continue working expeditiously toward mandatory data reporting standards and requirements, and in 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.