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AB-2778 Crimes: race-blind charging. (2021-2022)

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Assembly Bill No. 2778

CHAPTER 806

An act to add Section 741 to the Penal Code, relating to crimes.

[Approved by Governor September 29, 2022. Filed with Secretary of State September 29, 2022.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2778, McCarty. Crimes: race-blind charging.

Existing law provides a district attorney the discretion to file criminal charges against an individual. Existing law allows a district attorney to complete necessary investigations into alleged criminal conduct and make the decision of whether to proceed with filing criminal charges. Existing law allows a district attorney to participate in any project or program to improve the administration of justice.

This bill would, beginning on January 1, 2024, require the Department of Justice to develop and publish "Race-Blind Charging" guidelines whereby all prosecuting agencies, as specified, implement a process to review a case for charging based on information, from which all means of identifying the race of the suspect, victim, or witness have been removed or redacted. Following the department's guidelines, the bill would require prosecution agencies to independently develop and execute a process to review and to redact information based on general criteria, including, beginning January 1, 2025, how cases are to be redacted, that the initial charging evaluation is to determine whether the case should be charged or not charged, and that a prosecutor without knowledge of specified facts is required to perform the initial charging evaluation based on redacted information. The bill would require a second, complete review of the case using unredacted reports and available evidence to consider the applicable individual charges and enhancements to charge in a criminal complaint, or allow the case to be submitted to a jury. If the decision to charge or not to charge after a second review is different from the charging determination after the initial charging evaluation, the bill would require documentation of the change in charging determination as well as an explanation for the change to be part of the case record and would require these documents to be disclosed, upon request, after sentencing or dismissal of the charges, unless the documents are privileged or work product. The bill would require a decision not to put a case through a race-blind charging evaluation to be documented. The bill would authorize a prosecuting agency to remove or exclude certain classes of crimes or factual circumstances from a race-blind initial charging evaluation, including homicides, hate crimes, and cases involving public integrity. The bill would make related legislative findings and declarations. By imposing a higher level of service on local prosecutors, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: yes

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. The Legislature finds and declares all of the following:

(a) In recent years, the increasing availability of data regarding criminal justice has raised legitimate questions regarding racial disparities in how cases are investigated, charged, and prosecuted. In particular, studies suggest that unknowing or “unconscious” bias may infect many decisions within the criminal justice system, despite what may be the best intentions of the actors involved. (Baughman et al., Blinding Prosecutors to Defendants’ Race: A Policy Proposal to Reduce Unconscious Bias in the Criminal Justice System (Dec. 2015) Behavioral Science & Policy, 70.)

(b) One method to address bias is to “acknowledge its existence and create institutional procedures to prevent bias from influencing important decisions.” (id. 71) In other contexts, such as science, employment, or academia, the “blinding” of evaluators assists in dispelling concerns of discrimination or bias in decisionmaking. (id. 71-72)

(c) In an effort to increase community confidence in the charging process, and to reduce the potential for unconscious bias, some district attorney offices employ a method whereby reports received from the police are stripped of all data from which the race of the suspect may be determined so that at least the initial charging assessment of the case is done “race blind.” The Yolo County District Attorney in partnership with the Stanford Computational Policy Lab in 2021 created and implemented a race-blind charging system built into its case management system for most cases.

SEC. 2. Section 741 is added to the Penal Code, to read:

741. (a) Beginning January 1, 2024, the Department of Justice shall develop, issue, and publish “Race-Blind Charging” guidelines for a process whereby all prosecution agencies, for purposes of this section defined as agencies, or branches of agencies, that prosecute criminal violations of the law as felonies or misdemeanors, shall implement a process by which an initial review of a case for potential charging is performed based on information, including police reports and criminal histories from the Department of Justice, from which direct means of identifying the race of the suspect, victim, or witness have been removed or redacted.

(b) Following the department’s guidelines, prosecution agencies shall independently develop and execute versions of this redaction and review process with the following general criteria:

(1) Beginning January 1, 2025, cases received from law enforcement agencies and suspect criminal history documentation shall be redacted, by the receiving prosecution agency, in order to be used for a race-blind initial charging evaluation, which shall precede the ordinary charging evaluation. This redaction may occur in a separate version of the documents and may be done mechanically, by hand performed by personnel not associated with the charging of the case, or by automation with the use of computer programming, so long as the method used reasonably ensures correct redaction. The redaction may be applied to the entire report or to only the “narrative” portion of the report so long as the portion submitted for initial review is sufficient to perform that review and the unredacted portions are not part of the initial charging evaluation.

(2) The initial charging evaluation based on redacted information, including redacted reports, criminal histories, and narratives, shall determine whether the case should be charged or not be charged. Individual charges shall not be determined at this initial charging evaluation stage. Other evidence may be considered as part of this initial charging evaluation so long as the other evidence does not reveal redacted facts. The initial charging evaluation shall be performed by a prosecutor who does not have knowledge of the redacted facts for that case.

(3) After completion of a race-blind initial charging evaluation, the case shall proceed to a second, complete review for charging using unredacted reports and all available evidence in which the most applicable individual charges and enhancements may be considered and charged in a criminal complaint, or the case may be submitted to a grand jury.

(4) (A) Each of the following circumstances shall be documented as part of the case record:

(i) The initial charging evaluation determined that the case not be charged and the second review determined that a charge shall be filed.

(ii) The initial charging evaluation determined that the case shall be charged and the second review determined that no charge be filed.

(B) The explanation for the charging decision change shall be documented as part of the case record.

(C) The documented change between the result of the initial charging evaluation and the second review, as well as the explanation for the change, shall be disclosed, upon request, after sentencing in the case or dismissal of all charges comprising the case, subject to Section 1054.6 or any other applicable law.

(5) If a prosecution agency was unable to put a case through a race-blind initial charging evaluation, the reason for that inability shall be documented and retained by the agency. This documentation shall be made available by the agency upon request.

(6) The county shall collect the data resulting from the race-blind initial charging evaluation process and make the data available for research purposes.

(c) Each prosecution agency may remove or exclude certain classes of crimes or factual circumstances from a race-blind initial charging evaluation. This list of exclusions and the reasons for exclusion shall be available upon request to the Department of Justice and members of the public. Due to the increased reliance on victim or witness credibility, the availability of additional defenses, the increased reliance on forensics for the charging decision, or the relevance of racial animus to the charging decision, each of the following crimes may be excluded from a race-blind initial charging evaluation process:

(1) Homicides.

(2) Hate crimes.

(3) Charges arising from a physical confrontation where that confrontation is captured in video as evidence.

(4) Domestic violence and sex crimes.

(5) Gang crimes.

(6) Cases alleging either sexual assault or physical abuse or neglect where the charging decision relies upon either a forensic interview of a child or interviews of multiple victims or multiple defendants.

(7) Cases involving financial crimes where the redaction of documentation is not practicable or is cost prohibitive due to the volume of redactions, including, but not limited to, violations of Sections 368 and 503 and other crimes sounding in fraud consisting of voluminous documentation.

(8) Cases involving public integrity, including, but not limited to, conflict of interest crimes under Section 1090 of the Government Code.

(9) Cases in which the prosecution agency itself investigated the alleged crime or participated in the precharging investigation of the crime by law enforcement, including, but not limited to, the review of search warrants or advising law enforcement in the course of the investigation.

(10) Cases in which the prosecution agency initiated the charging and filing of the case by way of a grand jury indictment or where the charges arose from a grand jury investigation.

SEC. 3. If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.