

SENATE BILL NO. 337—SENATOR D. HARRIS

MARCH 22, 2021

Referred to Committee on Judiciary

SUMMARY—Requires the establishment of a system of blind charging when determining whether criminal charges should be filed against a person and whether a petition alleging delinquency of a child should be filed. (BDR 14-959)

FISCAL NOTE: Effect on Local Government: May have Fiscal Impact.
Effect on the State: Yes.

CONTAINS UNFUNDED MANDATE (§§ 1, 2)
(NOT REQUESTED BY AFFECTED LOCAL GOVERNMENT)

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EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to the administration of justice; requiring each prosecutorial office to establish, by July 1, 2030, a system of blind charging when determining whether criminal charges should be filed against a person; requiring each district attorney to establish, by July 1, 2030, a system of blind charging when determining whether a petition alleging delinquency of a child should be filed; requiring the preparation and submittal of certain reports concerning the implementation of systems of blind charging; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

Section 1 of this bill: (1) requires each prosecutorial office in this State to establish, by July 1, 2030, a system of blind charging when determining whether criminal charges should be filed against a person; and (2) prescribes certain requirements and procedures for the system, including the concealing of the race, religion, gender, national origin, ethnicity, sexual orientation, sexual identity or disability of the person.

Section 2 of this bill imposes a similar requirement as **section 1** with respect to the juvenile justice system by: (1) requiring each district attorney to establish, by July 1, 2030, a system of blind charging when determining whether a petition alleging delinquency of a child should be filed; and (2) prescribing certain



11 requirements and procedures for the system, including the concealing of the race,
12 religion, gender identity or expression, national origin, ethnicity, sexual orientation
13 or disability of the child.

14 **Section 3** of this bill: (1) requires each prosecutorial office and each district
15 attorney to submit to the Advisory Commission on the Administration of Justice a
16 report that provides information relating to its progress in the implementation of a
17 system of blind charging; and (2) requires the Commission to review the reports
18 submitted, consider whether the use of any practice or resource would be efficient
19 or beneficial in assisting the statewide implementation of systems of blind
20 charging, and prepare and submit a report to the Legislature containing any
21 recommendations that may assist in the statewide implementation of systems of
22 blind charging.

23 **Section 4** of this bill clarifies that a prosecutorial office or district attorney
24 may, before July 1, 2030: (1) use a system of blind charging that complies with the
25 provisions of this bill; or (2) use a limited system of blind charging only for certain
26 crimes or only with respect to certain characteristics of a person if such use is made
27 to assist in its implementation of a system of blind charging that complies with the
28 provisions of this bill.

1 WHEREAS, It is an essential principle of a fair system of criminal
2 justice that all people must be treated equally regardless of the race,
3 religion, gender identity or expression, ethnicity, national origin,
4 sexual orientation or disability of the accused defendant or victim;
5 and

6 WHEREAS, The Equal Protection Clause of the Fourteenth
7 Amendment of the United States Constitution requires the system of
8 criminal justice in this State to treat all people equally; and

9 WHEREAS, Section 1 of Article 1 of the Nevada Constitution
10 recognizes that all people are by nature free and equal and have an
11 inalienable right to life and liberty; and

12 WHEREAS, Immutable characteristics of a person may influence
13 actors in the system of criminal justice, and the 2019 Pew Research
14 study, "Race in America 2019," found that a majority of all adults in
15 the United States believe that the system of criminal justice treats
16 persons who are Black differently than persons who are White; and

17 WHEREAS, Prosecutors have broad discretion in determining
18 when to prosecute a person and what charges, if any, to file against a
19 person, and disparities in the treatment of persons by the system of
20 criminal justice may start with the original determination of whether
21 or not to charge a person with a crime; and

22 WHEREAS, The use of practices like a system of blind charging
23 may assist in mitigating the possibility of disparate treatment of
24 persons based upon certain immutable characteristics and may help
25 to create a more just and fair system of criminal justice in this State;
26 now, therefore



1 THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
2 SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:
3

4 **Section 1.** Chapter 178 of NRS is hereby amended by adding
5 thereto a new section to read as follows:

6 *1. Each prosecutorial office in this State shall, not later than*
7 *July 1, 2030, establish a system of blind charging when*
8 *determining whether to file a criminal charge against a person.*
9 *The system must include, without limitation, the following*
10 *requirements and procedures:*

11 *(a) The characteristics of a person accused of a crime must be*
12 *concealed from the prosecutor who is assigned the duty to*
13 *consider whether to file any criminal charge against the person*
14 *while the prosecutor is making the initial decision whether to file*
15 *any criminal charges against the person.*

16 *(b) To carry out the provisions of paragraph (a), the following*
17 *information must be concealed from the prosecutor to ensure that,*
18 *to the extent possible, the prosecutor is not aware of whether or*
19 *not a person is a member of a protected class while determining if*
20 *the person should be charged with a crime:*

21 *(1) Any reference to the race, religion, gender identity or*
22 *expression, national origin, sexual orientation or disability of the*
23 *person or of a victim or witness;*

24 *(2) Physical descriptors of the person or of a victim or*
25 *witness;*

26 *(3) The name or alias of the person or of a victim or*
27 *witness, including the name of any peace officer;*

28 *(4) The location of the incident; and*

29 *(5) Any other information the prosecutorial office*
30 *determines is necessary to conceal to carry out the provisions of*
31 *this paragraph.*

32 *(c) Upon making the initial decision whether to file any*
33 *criminal charge against the person, the prosecutor shall record*
34 *that initial decision in the case file.*

35 *(d) After the initial decision is made and recorded in the case*
36 *file, all information about the person and case may be disclosed to*
37 *the prosecutor and the prosecutor may review any evidence that*
38 *was previously concealed and determine whether to change the*
39 *initial decision.*

40 *(e) If the final decision to file or not file any criminal charge*
41 *against the person is different from the initial decision, the*
42 *prosecutor shall record in the case file an explanation of the*
43 *reasons for changing the decision.*

44 **2. As used in this section:**

45 **(a) "Prosecutor" means:**



1 (1) *The Attorney General or any deputy attorney general;*
2 (2) *The district attorney or any deputy district attorney; or*
3 (3) *The city attorney of an incorporated city or any deputy*
4 *city attorney.*

5 (b) *“Prosecutorial office” means the office of:*

- 6 (1) *The Attorney General;*
7 (2) *The district attorney of a county; or*
8 (3) *The city attorney of an incorporated city.*

9 **Sec. 2.** Chapter 62C of NRS is hereby amended by adding
10 thereto a new section to read as follows:

11 *Each district attorney in this State shall, not later than*
12 *July 1, 2030, establish a system of blind charging when*
13 *determining whether to file a petition alleging that a child is*
14 *delinquent. The system must include, without limitation, the*
15 *following requirements and procedures:*

16 1. *The characteristics of the child must be concealed from the*
17 *attorney who is assigned the duty to consider whether to file a*
18 *petition while the attorney is making the initial decision whether to*
19 *file a petition.*

20 2. *To carry out the provisions of subsection 1, the following*
21 *information must be concealed from the attorney to ensure that, to*
22 *the extent possible, the attorney is not aware of whether or not the*
23 *child is a member of a protected class while determining whether*
24 *to file the petition:*

25 (1) *Any reference to the race, religion, gender identity or*
26 *expression, national origin, sexual orientation or disability of the*
27 *child or of a victim or witness;*

28 (2) *Physical descriptors of the child or of a victim or*
29 *witness;*

30 (3) *The name or alias of the child or of a victim or witness,*
31 *including the name of any peace officer;*

32 (4) *The location of the incident; and*

33 (5) *Any other information the district attorney determines is*
34 *necessary to conceal to carry out the provisions of this subsection.*

35 3. *Upon making the initial decision whether to file a petition,*
36 *the attorney shall record that initial decision in the case file.*

37 4. *After the initial decision is made and recorded in the case*
38 *file, all information about the child and case may be disclosed to*
39 *the attorney and the attorney may review any evidence that was*
40 *previously concealed and determine whether to change the initial*
41 *decision.*

42 5. *If the final decision to file or not file a petition is different*
43 *from the initial decision, the attorney shall record in the case file*
44 *an explanation of the reasons for changing the decision.*



1 **Sec. 3.** 1. On or before November 1 of each even-numbered
2 year, each prosecutorial office and each district attorney shall
3 submit to the Advisory Commission on the Administration of
4 Justice a report that provides information relating to its progress in
5 implementation of a system of blind charging as required pursuant
6 to section 1 or 2 of this act, as applicable.

7 2. The report required pursuant to this section must be
8 submitted in a format prescribed by the Commission and must
9 include clear and concise information that sets forth:

10 (a) The actions, if any, taken to implement a system of blind
11 charging;

12 (b) The future actions, if any, that will be taken to implement a
13 system of blind charging; and

14 (c) A description of any outside resources, if any, that were used
15 or are expected to be used to assist in the implementation of a
16 system of blind charging, including, without limitation, the use of
17 any free software or other resources.

18 3. The Commission shall review the reports submitted pursuant
19 to this section and consider whether the use of any practice or
20 resource would be efficient or beneficial in assisting the statewide
21 implementation of systems of blind charging. The Commission
22 shall, based upon its review of the reports submitted pursuant to this
23 section, prepare and submit to the Director of the Legislative
24 Counsel Bureau, for transmittal to the Legislature, on or before the
25 first day of each regular session, a report containing any
26 recommendations that may assist in the statewide implementation of
27 systems of blind charging.

28 **Sec. 4.** 1. A prosecutorial office or district attorney may,
29 before July 1, 2030:

30 (a) Use a system of blind charging that complies with the
31 provisions of section 1 or 2 of this act, as applicable; or

32 (b) Use a limited system of blind charging only for certain
33 crimes or only with respect to certain characteristics of a person if
34 such use is made to assist in its implementation of a system of blind
35 charging that complies with the provisions of section 1 or 2 of this
36 act, as applicable,

37 ↳ and the provisions of this act must not be construed to prohibit or
38 restrict a prosecutorial office from using a system of blind charging
39 or limited system of blind charging before July 1, 2030.

40 2. As used in this section, "prosecutorial office" has the
41 meaning ascribed to it in section 1 of this act.

42 **Sec. 5.** The provisions of subsection 1 of NRS 218D.380 do
43 not apply to any provisions of this act which adds or revises a
44 requirement to submit a report to the Legislature.



1 **Sec. 6.** The provisions of NRS 354.599 do not apply to any
2 additional expenses of a local government that are related to the
3 provisions of this act.

4 **Sec. 7.** 1. This act becomes effective on July 1, 2021.

5 2. Sections 3 and 4 of this act expire by limitation on
6 June 30, 2030.

