

Jason M. Groth: Let voters, not politicians, decide how prosecutors do their jobs

Bill before Utah Legislature would push more people into expensive prison cells.

<https://www.sltrib.com/opinion/commentary/2022/02/10/jason-m-groth-let-voters/>

Salt Lake Tribune

Feb. 10, 2022

The ACLU of Utah has never been shy about challenging the way county prosecutors make decisions, from how they [overcharge protestors](#) to [their failures to meaningfully address racial disparities](#) in the criminal legal system. We have also been part of the solution by helping [pass legislation that increased transparency and data collection](#) on how prosecutors file charges. Since the ACLU began our Campaign for Smart Justice in 2018, we have consistently described prosecutors as the gatekeepers to the legal system who hold crucial decision-making power to make it work better for the people of Utah. This discretion, however, is being challenged by a new bill at the Utah Legislature, [HB257](#), that would turn prosecutors into automatons by removing their case-by-case discretion to meet the ends of justice.

Currently, prosecutors have the professional latitude to consider special circumstances related to a case and make charging determinations based on their judgement and experience. But HB257 would strip away this discretion by limiting when a prosecutor may file a case with a reduced charge. It would force prosecutors to make algorithmic decisions weighted to seek maximum charges and penalties regardless of public safety concerns, input from victims and relevant mitigation.

As a former public defender, I have observed how a gradient of facts and circumstances can influence whether a person should be charged with a misdemeanor or a felony. I also know that the initial charges filed against the accused often determine the entire trajectory of a criminal case. Eliminating the ability of prosecutors to make case-by-case filing decisions, and maximizing the severity of their initial charges, will obstruct good outcomes in the criminal legal system.

HB257 does even more damage, however, by limiting access to diversion programs that help people accused of crimes avoid unnecessary prosecutions while also being accountable for their actions. These programs allow prosecutors to screen and select cases that can be resolved without a formal prosecution in the courtroom.

Participants in these programs have a set of a rules to follow and often participate in classes or therapy to address underlying issues related to the alleged crime. When the program is completed, no charges are filed. HB257 blocks public funding for these diversion programs, which are often faster and cheaper resolutions than court cases that have spiraling costs for judges, defense attorneys and prosecutors.

By limiting access to diversion programs, HB257 would clog our courts with costly prosecutions and fill jails with more people — all at taxpayer expense — instead of allowing more efficient and effective alternatives to secure justice.

Lastly, HB257 tramples the existing authority behind our criminal legal system: the voters. From initial charges to sentencing recommendations, every decision about how to hold people accountable for their crimes is made or influenced by the elected county attorney or district attorney. Elections for a county's top prosecutor are held every four years in Utah, and 2022 is an election year where voters will get to decide who makes those decisions. Instead of bills like HB257 that meddle in how local prosecutors do their jobs, voters can go to the ballot box to determine the type of prosecutor policies they want. This year you can choose who your local prosecutor is by voting in the primary election on June 28 and in the general election on November 8.

During similar elections four years ago, the Campaign for Smart Justice partnered with the Better Utah Institute to organize three debates for county attorney candidates in Wasatch, Utah and Salt Lake counties that attracted hundreds of audience members. We also published questionnaires completed by 10 candidates for the top prosecutor position in seven counties across Utah.

For the elections in 2022, we are planning similar initiatives and events to educate voters about their local prosecutor candidates. You can learn more by visiting our website www.SmartJusticeUtah.org.

We focus on these elections because we believe that you, the voter, should decide how prosecutions should happen in your community. Ballots and voting booths, not troubled bills like HB257, are the appropriate way to update your local prosecutor's office.



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