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August 22, 2023

TO: The Senate Committee on Judiciary and Public Safety

FR: Sen. Rob Hutton

RE: Senate Bill 86

Thank you for holding a hearing on Senate Bill 86. This bill relates to dismissing or amending certain criminal charges and deferred prosecution agreements for certain crimes.

Under current law, felons who illegally possess firearms can face up to 10 years in prison, yet the severity of this crime often escapes the consequences of the law. Our legal system regularly encounters instances of repeat felons illegally possessing firearms, because prosecutors are able to dismiss charges without the approval of the court. This cycle of the law being ignored creates no incentive for criminals to stop committing these crimes. Our priority should be to ensure criminals face the ramifications of their actions, especially when the prosecutor's dismissal allows law abiding citizens to continue to be victimized.

Between 2011 and 2015, 3,637 felony gun possession cases were brought before the Milwaukee County District Attorney's Office. Yet, an investigation by Fox 6 found that approximately 75% of saw no prison time for that offense and 37% never had charges filed.

To address this lack of action, our bill would require that prosecutors seeking to dismiss charges, amend charges, or place an individual in a deferred prosecution program for a violent felon in the following crimes would need the approval of the court before being able to do so:

- 1) A crime of domestic abuse or a violation of a domestic violence temporary restraining order or injunction;
- 2) Theft of an automobile;
- 3) A crime of abuse of an individual at risk or a violation of an individual-at-risk TRO or injunction;
- 4) First-degree, second-degree, or third-degree sexual assault;
- 5) A crime against a child;
- 6) Illegal possession of a firearm if the person has been convicted of, adjudicated delinquent for, or found not guilty by reason of mental disease or defect of, committing, soliciting, conspiring, or attempting to commit a violent felony, as defined under current law; or
- 7) Reckless driving that results in great bodily harm.

Again, thank you for your time and consideration of this bill. I respectfully ask for your support.

NIK RETTINGER

STATE REPRESENTATIVE · 83rd ASSEMBLY DISTRICT

Testimony on Senate Bill 68
Senate Committee on Judiciary and Public Safety
August 22, 2023

Thank you, Chairman Wanggaard, and other members of the Senate Judiciary and Public Safety Committee for the opportunity to testify on Senate Bill 86. I would also like to thank Senator Rob Hutton for authoring this crucial legislation with me.

This proposal was brought to my attention not long after being sworn in when I joined a working group of fellow legislators who shared in my support of public safety and the need to identify solutions to the growing crime wave impacting Milwaukee and surrounding counties. To that point, this legislation is based on a bill brought forward several sessions ago with additions to meet the changing landscape and challenges being faced in keeping communities safe.

Presently, a prosecutor can dismiss or amend a criminal charge without approval from the court. Our bill would require a prosecutor to get the courts approval to dismiss or amend a charge if the charge is one of several crimes listed, including sexual assaults and crimes against children.

You'll notice additional specific requirements for illegal possession of a firearm. This is done with purpose, as we all too often see cases where the individual committing the crime does so while in possession of a firearm that current laws forbid them from obtaining. I think we can all agree that we must get more serious when it comes to crimes being committed while illegally possessing a firearm and enforcing the gun laws we already have on the books.

A previous investigation by Fox 6 found that approximately $\frac{3}{4}$ of felons arrested for illegal possession of a firearm in Milwaukee County saw no prison time for that offense and 37% never had charges filed. This is woefully unacceptable. If a court does approve any dismissal or amendment in a year, that court must submit an annual report to the legislature detailing each approval.

Finally, this bill prohibits a prosecutor from entering a deferred prosecution agreement with an individual who is charged or may be charged with crimes 1 through 7. Generally speaking, under a deferred prosecution agreement, a prosecutor agrees to dismiss or not file a charge if the defendant complies with specified conditions.

We ask our law enforcement officers to put on the badge and protect our homes and communities. This is already a stressful job, not to mention the increased hostility law enforcement officers have come under in recent years. It is incredibly frustrating to be arresting the same individuals, even just hours after a previous arrest, in what has become a revolving door of criminality. We must get more serious about these types of crimes before they escalate to a tragedy.

Senate Bill 86 provides an opportunity to do just that and not dismiss or defer prosecution of these serious crimes. Thank you, again, to my colleagues on the Senate Judiciary and Public Safety Committee for hearing this bill today. I am happy to take your questions.



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Chair Wanggaard, Vice-Chair Jacque, and Honorable Members of the Senate Committee on Judiciary and Public Safety:

The American Civil Liberties Union of Wisconsin appreciates the opportunity to provide testimony in opposition to Assembly Bill 57/Senate Bill 86.

AB-57/SB-86 would require approval from the court any time a local prosecutor wants to dismiss or amend a criminal charge for a series of offenses “only if the court finds the action is consistent with the public’s interest in deterring the commission of these crimes and with the legislature’s intent” to “encourage the vigorous prosecution of persons who commit offenses that are covered crimes.” Further, the bill would prohibit a prosecutor from entering into a deferred prosecution agreement with a person “accused of or charged with” one of the enumerated offenses.

There are a multitude of reasons why a charge may be dismissed or amended by a prosecutor, including the innocence of an individual charged with a crime, insufficient evidence for a charge to stand, or constitutional concerns with police action. Procedural justice, fairness, and upholding the constitutional rights of the accused are foundational principles of the criminal legal system, not solely “vigorous prosecution” and “deterrence.”

This bill would limit access to critically important diversion programs, particularly for individuals first charged with—or even “accused of”—a crime as a young adult. Several jurisdictions throughout the state have implemented evidence-based early intervention programs that provide targeted interventions through diversion or deferred prosecution agreements that pair risk reduction strategies (such as therapy, community service, substance use treatment, and/or educational programming) with accountability measures. Research has shown that these programs maximize opportunities to support and encourage prosocial attitudes and behaviors among those who become involved in the system, while aiming to minimize collateral consequences for individuals who are system impacted.

In Wisconsin, approximately [1.4 million people](#) have a criminal record, which can result in countless [collateral consequences](#) that can make successful reentry a daunting task. People often struggle mightily to land a stable job, secure housing, access public benefits, get an education, and more. Criminal records live on well after a person has done their time, functioning as a penalty that follows people forever as they navigate a world in which meaningful opportunities for growth and self-improvement are closed off to them. By taking away local prosecutors’ discretion on the front end of the system to account for individual circumstances in cases when making charging decisions, entering plea agreements, and offering opportunities to engage in a deferred prosecution program, AB-57/SB-86 will exacerbate the downstream social and economic harms of overcriminalization to individuals, families, and communities.

Decisions by the legislature each session seeking to add new and duplicative offenses, increase penalties, and in this case, limit access to diversion opportunities, will exacerbate racial and economic disparities in Wisconsin's criminal legal system. According to a [report](#) published by the Sentencing Project, Wisconsin has the highest Black incarceration rate in the country. Data shows that 1 in 36 Black Wisconsinites are currently incarcerated, meaning Black people are nearly 12 times more likely to be incarcerated than white people. According to a [study](#) by the Wisconsin Court System, Native American men are 28% more likely to be sentenced to prison than their white counterparts. Taking one step back in the criminal justice assembly line, [research](#) has shown that white defendants in Wisconsin are more likely to have their most significant charges dropped or amended down than Black defendants. Racial and economic disparities exist at every stage of the criminal legal system. Any change to the criminal law will have a compounding effect on these existing disparities.

The ACLU of Wisconsin strongly urges committee members to vote against this proposal.