



# ROB HUTTON

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## **Testimony in Support of Senate Bill 76**

Senate Committee on Judiciary and Public Safety  
March 13, 2025

Thank you, Chairman Wanggaard and committee members, for holding a hearing on Senate Bill 76. This bill places sensible checks on the dismissing or amending of charges for certain crimes and limits deferred prosecution agreements.

Felons illegally possessing firearms are a common example of repeat criminals who face no real consequences and are set free only to immediately re-offend. The same is often true of reckless drivers, car thieves, abusers and other criminals. In many conversations with law enforcement, I know that one of their top frustrations is that police continue to re-arresting the same offenders only to see them set free by a lenient prosecutor.

Because prosecutors often dismiss charges without checks or balances, the revolving door of the justice system keeps turning and the cycle of lawlessness continues. We should ensure criminals face the full consequences their actions, especially when a prosecutor's leniency needlessly puts communities in danger.

From 2011 to 2015, police referred 3,637 gun possession cases to the Milwaukee County District Attorney's Office. Investigators in a Fox 6 report found charges were never filed in 37% of them.

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

The bill lists specific crimes of domestic abuse, auto theft, crimes against at-risk individuals, sexual assault, a crime against a child, illegal firearm possession, and reckless driving that results in great bodily harm.

The bill also codifies legislative intent that these crimes should be vigorously prosecuted and requires the court to submit an annual report to the legislature detailing each approval.

Senate Amendment 1 mirrors Assembly Amendment 1, unanimously adopted by the Assembly Committee on Judiciary, removing two minor modifications in Chapter 20.

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

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# BRENT JACOBSON

STATE REPRESENTATIVE • 87<sup>th</sup> ASSEMBLY DISTRICT

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## Testimony in Support of Senate Bill 76

Senate Committee on Judiciary and Public Safety

March 13<sup>th</sup> 2025

Chairman Wanggaard and fellow members of the Senate Committee on Judiciary and Public Safety, thank you for receiving my written testimony on Senate Bill 76. In the last several years, Wisconsin's major cities have experienced a concerning rising trend in crime. Milwaukee, our largest city, faces an epidemic of automobile theft. In 2021, Milwaukee was ranked the 8<sup>th</sup> worst city nationwide for car theft by the national Insurance Crime Bureau. While auto theft has since declined since that peak, in 2024 auto theft increased compared to 2023. Furthermore, the city's homicide rate has not returned to levels before its dramatic spike in 2020. AB 66 aims to address this worrying trend by ensuring our justice system treats these crimes with the seriousness they deserve.

Currently, a prosecutor can unilaterally dismiss or amend criminal charges without approval from the court. Under AB 66, prosecutors would be required to get court approval to dismiss or amend a charge if it is one of seven crimes, including sexual assault, violating a restraining order, crimes against a child, and illegal possession of a firearm. This proposal would also prohibit prosecutors from entering a deferred prosecution agreement for individuals charged with those same seven crimes.

I want to make it clear; this bill would not prevent prosecutors from seeking to dismiss or amend one of these charges. It simply ensures that these dismissals or amendments are consistent with the public interest. Furthermore, this bill would require any court that approves a dismissal or amendment to submit an annual report explaining that approval to the legislature.

In his State of the State Address, Governor Evers specifically highlighted the threat posed by dangerous individuals with firearms. Current Wisconsin law treats these kinds of offenses very seriously. A felon found illegally possesses a firearm faces up to 10 years in prison. Astonishingly, a significant number of these cases end up being dismissed. A Fox 6 investigation found that over a third of felony gun charges in Milwaukee County between 2011 and 2015 were dismissed. We cannot expect any new laws addressing confronting gun crime to succeed when the criminals who violate our existing gun laws do not face consequences.

I can think of few things more frustrating and demoralizing for our law enforcement officers to repeatedly arrest the same individuals, at times for the same offenses, over and over again. For the sake of the safety of our communities and the integrity of our laws, we must ensure that dangerous criminals face the full ramifications of their actions.

# BRENT JACOBSON

Thank you for your consideration of this bill. I would be happy to answer any questions you may have, and I respectfully ask for your support.

## Testimony in Support of Senate Bill 28

Presented before the Finance and Public Safety Committee

April 13, 2017

I am pleased to appear before the Finance and Public Safety Committee to testify in support of Senate Bill 28. I am a member of the Wisconsin State Bar Association and have practiced law in Wisconsin for over 20 years. I have also served on the Wisconsin State Bar Association's Board of Directors and have been involved in various public policy issues. I am a strong supporter of the proposed changes to the Wisconsin State Bar Association's governance structure and believe that these changes are necessary to ensure the highest quality of legal services to the people of Wisconsin.

The proposed changes to the Wisconsin State Bar Association's governance structure are a significant step towards ensuring the highest quality of legal services to the people of Wisconsin. The proposed changes will ensure that the Wisconsin State Bar Association is governed by a board of directors that is representative of the entire state and that is focused on the highest quality of legal services to the people of Wisconsin. I believe that these changes are necessary to ensure the highest quality of legal services to the people of Wisconsin.

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AMERICAN CIVIL LIBERTIES UNION

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March 13, 2025

Chair Wanggaard, Vice-Chair Jacobson, 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 Senate Bill 76.**

We cannot continue to double down on harmful policies that have pushed our correctional system to a breaking point and failed to actually improve safety and material conditions in Wisconsin communities. As a reminder, we have over 23,000 people incarcerated in state prisons, about 12,000 in county jails, and over 63,000 people on probation, parole, and extended supervision.

Devastatingly, 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.<sup>1</sup> According to a study by the Wisconsin Court System, Native American men are 34% more likely and Black men are 28% more likely to be sentenced to prison than their white counterparts,<sup>2</sup> Wisconsin also has a higher percentage of people incarcerated for crimes committed as youth than any state in the country except Louisiana.<sup>3</sup>

We all want to live in safe and healthy communities, and legislation should be focused on the most effective approaches to achieving that goal. Senate Bill 76 is a step in the wrong direction.

SB-76 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 “if a complaint or information is filed that alleges the person committed a covered crime or if the person is charged with a covered crime.”

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<sup>1</sup> Clare Amari, *Wisconsin imprisons 1 in 36 Black adults. No state has a higher rate.*, Wisconsin Watch (Oct. 13, 2021), <https://wisconsinwatch.org/2021/10/wisconsin-imprisons-1-in-36-black-adults-no-state-has-a-higher-rate/>

<sup>2</sup> DRAFT: *Race and Prison Sentencing in Wisconsin: Initial Outcomes of Felony Convictions, 2009-2018* (Jan. 2020), [https://s3.documentcloud.org/documents/20478391/race-prison-sentence-felony-report-draft\\_2020\\_02\\_05.pdf](https://s3.documentcloud.org/documents/20478391/race-prison-sentence-felony-report-draft_2020_02_05.pdf).

<sup>3</sup> Alexander Shur, *Wisconsin has 2nd highest percentage of prisoners locked up for crimes committed as youth*, Wisconsin State Journal (May 23, 2023), [https://madison.com/news/state-regional/government-politics/wisconsin-has-2nd-highest-percentage-of-prisoners-locked-up-for-crimes-committed-as-youth/article\\_4a6c1600-f5b7-11ed-9186-ffd641c2443d.html](https://madison.com/news/state-regional/government-politics/wisconsin-has-2nd-highest-percentage-of-prisoners-locked-up-for-crimes-committed-as-youth/article_4a6c1600-f5b7-11ed-9186-ffd641c2443d.html).

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 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,<sup>4</sup> resulting in countless collateral consequences<sup>5</sup> that make successful reentry a daunting task. People often struggle mightily to land a stable job, secure housing, access public benefits, and get an education. 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, SB-76 will exacerbate the downstream social and economic harms of overcriminalization to individuals, families, and communities.

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

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<sup>4</sup> “A Fresh Start: Wisconsin’s Atypical Expungement Law and Options for Reform,” Wisconsin Policy Forum (June 2018), <https://wispolicyforum.org/research/a-fresh-start-wisconsins-atypical-expungement-law-and-options-for-reform/>.

<sup>5</sup> National Inventory of Collateral Consequences of Conviction, <https://niccc.nationalreentryresourcecenter.org/consequences>; Wisconsin Snapshot of Employment-Related Collateral Consequences, <https://csgjusticecenter.org/wp-content/uploads/2021/02/collateral-consequences-wisconsin.pdf>.



# WISCONSIN STATE PUBLIC DEFENDERS

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Senate Committee on Judiciary and Public Safety

March 13, 2025

Chair Wanggaard and committee members,

Thank you for the opportunity to provide our perspective on Senate Bill 76. SB 76 creates a hand-picked list of charges that are ineligible for deferred prosecution agreements and must receive court approval to be amended or dismissed. The Wisconsin State Public Defenders oppose this bill and the limitations proposed. The changes made in this bill dismantle the prosecutorial discretion that our legal system relies upon.

Prosecutors have broad discretion in deciding whether to prosecute a case and what charges to file. Those decisions are based upon the circumstances known to the prosecutor at the time. The factual basis for a specified charge can vary significantly – some allegations are more mitigating, while others are more aggravating. As the case progresses, the accused will have counsel to evaluate the evidence, investigate the allegations, and provide additional information to the prosecutor. Other witnesses, including alleged victims, may also provide additional information or express preferences about how the case is prosecuted, which may alter the prosecutor's assessment of the case. As a result, prosecutors may choose to dismiss or amend a charge for a variety of reasons – they may determine there is insufficient evidence to proceed to trial, there may be constitutional concerns with police action, or, most notably, the individual charged may be determined to be innocent upon further review. Restricting prosecutors' ability to dismiss or amend certain charges based upon their experience and the individual facts and circumstances strips them of their discretion.

SB 76 represents an attempt to restrict discretion in the criminal legal system and replace it with a one-size-fits-all automatic charging structure. We have serious concerns that removing discretion would erase the years of progress we have made as a legal system in adopting evidence-based practices. As public defenders, we rely on prosecutors to thoughtfully review the circumstances and use evidence-based decision making to draw a conclusion. Evidence-based practices are in the best interest of our clients and our communities, and we oppose the effort to ignore or restrict the use of these practices that have proven effective.

Thank you for the opportunity to share our concerns. If you have any questions, please contact our Government & Public Affairs Specialist, Elena Kruse at [krusee@opd.wi.gov](mailto:krusee@opd.wi.gov).