January 29, 2020 – Introduced by Senators KAPENGA, CRAIG, JACQUE, MARKLEIN, NASS and STROEBEL, cosponsored by Representatives SANFELIPPO, HUTTON, ALLEN, DITTRICH, DUCHOW, EDMING, GUNDRUM, HORLACHER, JAGLER, JAMES, KATSMA, KNODL, KUGLITSCH, OTT, PLUMER, RAMTHUN and TITTL. Referred to Committee on Judiciary and Public Safety.

AN ACT to create 941.29 (4n) of the statutes; relating to: prosecuting a violent felon for the crime of illegal possession of a firearm.

Analysis by the Legislative Reference Bureau

Current law prohibits the following persons from possessing a firearm: persons who have been convicted of a felony; persons found not guilty of a felony by reason of mental disease or defect; persons who are subject to certain injunctions such as a domestic abuse or child abuse injunction or, in certain cases, a harassment or an individuals-at-risk injunction; and persons who have been subject to involuntary commitment for mental health treatment and ordered not to possess a firearm. Under this bill, if a prosecutor has charged a person with illegal possession of a firearm and 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, the prosecutor may not place the person in a deferred prosecution program and the prosecutor may not dismiss or amend the charge without the approval of the court. The court may approve the dismissal or amendment only if the court finds the action is consistent with the public’s interest in deterring the possession of firearms by violent felons and with the legislature’s intention to vigorously prosecute violent felons who illegally possess a firearm. If the court approves at least one dismissal or amendment in a year, the court must submit an annual report to the legislature detailing each approval.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:
SECTION 1. 941.29 (4n) of the statutes is created to read:

941.29 (4n) (a) The legislature intends to encourage the vigorous prosecution of violent felons who illegally possess a firearm.

(b) Notwithstanding s. 971.29, if an individual is charged with a violation under sub. (1m) and the individual 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, the prosecutor may not dismiss or amend the charge without the approval of the court. In the application to the court, the prosecutor shall state the reasons for the proposed amendment or dismissal. The court may approve the application only if the court finds that the proposed amendment or dismissal is consistent with the public's interest in deterring the possession of firearms by violent felons and consistent with the legislature's intention expressed in par. (a). If a court approves at least one application in a year, the court shall submit to the appropriate standing committees of the legislature under s. 13.172 (3) an annual report detailing each application the court approved that year and how each approval is consistent with the public's interest and the legislature's intention.

(c) A prosecutor may not place an individual in a deferred prosecution program if the individual is accused of or charged with a violation under sub. (1m) and the individual 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.

SECTION 2. Initial applicability.
(1) This act first applies to charges issued on the effective date of this subsection.