



2023 SENATE BILL 86

March 1, 2023 - Introduced by Senators HUTTON, NASS and JACQUE, cosponsored by Representatives RETTINGER, MICHALSKI, DONOVAN, KNODL, NEDWESKI, MURPHY and BEHNKE. Referred to Committee on Judiciary and Public Safety.

1 **AN ACT** *to repeal* 971.37; *to amend* 20.410 (1) (gL), 20.437 (1) (hh), 814.75 (8),
2 814.75 (8m), 814.76 (6), 814.80 (6), 814.81 (6), 971.38 (1) and 971.39 (1) (intro.);
3 and *to create* 967.056 and 968.075 (7) (c) of the statutes; **relating to:**
4 dismissing or amending certain criminal charges and deferred prosecution
5 agreements for certain crimes.

Analysis by the Legislative Reference Bureau

Under current law, a prosecutor may dismiss or amend a criminal charge without approval from the court. Under this bill, a prosecutor must get the court's approval to dismiss or amend a charge if the charge is for any of the following: 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. The court may approve the dismissal or amendment of such a charge 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, expressed in this bill, to vigorously prosecute individuals who commit these crimes. If the court approves any dismissal or

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amendment in a year, the court must submit an annual report to the legislature detailing each approval.

Current law allows a prosecutor to enter into a deferred prosecution agreement with a defendant who is charged or may be charged with a crime. Generally, under a deferred prosecution agreement, the prosecutor agrees to dismiss a charge or not file a charge if the defendant complies with specified conditions. In addition, current law provides specific criteria for a deferred prosecution agreement if the defendant is or may be charged with child sexual abuse if the defendant is the parent of, the guardian of, a close relative of, or residing with the child; with a crime of domestic violence; or with a violation of a domestic violence TRO or injunction. Current law also prohibits a prosecutor from entering into a deferred prosecution agreement with a defendant who is charged or may be charged with operating a vehicle while under the influence of an intoxicant or a controlled substance, causing injury to another while operating a vehicle while under the influence, or homicide by intoxicated use of a vehicle. The bill prohibits a prosecutor from entering into a deferred prosecution agreement with a defendant who is or may be charged with any of the same crimes listed in items 1 to 7 above.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 20.410 (1) (gL) of the statutes is amended to read:

2 20.410 (1) (gL) *Global positioning system tracking devices for certain violators*
3 *of restraining orders.* All moneys received under s. 301.49 (5) and all moneys received
4 from the global positioning system tracking surcharge on court fines, as authorized
5 under s. ~~971.37 (1m) (e) 1.~~ or 973.057, for expenditures related to the global
6 positioning system tracking program under s. 301.49. If the unencumbered balance
7 in this appropriation account exceeds \$100,000 immediately before the end of any
8 fiscal year, the department of corrections shall transfer the excess to the
9 appropriation account under s. 20.437 (1) (hh) at the end of that fiscal year.

10 **SECTION 2.** 20.437 (1) (hh) of the statutes is amended to read:

11 20.437 (1) (hh) *Domestic abuse surcharge grants.* All moneys received from the
12 domestic abuse surcharge on court fines, as authorized under s. ~~971.37 (1m) (e) 1.~~ or
13 973.055, to provide grants to domestic abuse services organizations under s. 49.165.

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1 **SECTION 3.** 814.75 (8) of the statutes is amended to read:

2 814.75 **(8)** The domestic abuse surcharge under s. ~~971.37 (1m) (e) 1.~~ or 973.055.

3 **SECTION 4.** 814.75 (8m) of the statutes is amended to read:

4 814.75 **(8m)** The global positioning system tracking surcharge under s. ~~971.37~~
5 ~~(1m) (e) 1.~~ or 973.057.

6 **SECTION 5.** 814.76 (6) of the statutes is amended to read:

7 814.76 **(6)** The domestic abuse surcharge under s. ~~971.37 (1m) (e) 1.~~ or 973.055.

8 **SECTION 6.** 814.80 (6) of the statutes is amended to read:

9 814.80 **(6)** The domestic abuse surcharge under s. ~~971.37 (1m) (e) 1.~~ or 973.055.

10 **SECTION 7.** 814.81 (6) of the statutes is amended to read:

11 814.81 **(6)** The domestic abuse surcharge under s. ~~971.37 (1m) (e) 1.~~ or 973.055.

12 **SECTION 8.** 967.056 of the statutes is created to read:

13 **967.056 Prosecution of certain crimes. (1) INTENT.** The legislature intends
14 to encourage the vigorous prosecution of persons who commit offenses that are
15 covered crimes.

16 **(2) DEFINITION.** In this section, “covered crime” means any of the following:

17 (a) An act of domestic abuse, as defined in s. 968.075 (1) (a), that constitutes
18 the commission of a crime or a violation of a temporary restraining order or
19 injunction issued under s. 813.12.

20 (b) A violation of s. 943.23.

21 (c) A violation of s. 940.198 or 940.285 or a violation of a temporary restraining
22 order or injunction issued under s. 813.123.

23 (d) A violation of s. 940.225 (1), (2), or (3).

24 (e) A crime specified in ch. 948, including a crime specified in s. 948.015.

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1 (f) A violation of s. 941.29 (1m) if the individual has been convicted of,
2 adjudicated delinquent for, or found not guilty by reason of mental disease or defect
3 of, committing, soliciting, conspiring, or attempting to commit a violent felony, as
4 defined in s. 941.29 (1g) (a).

5 (g) A violation of s. 346.62 (4).

6 **(3) DISMISSING OR AMENDING CHARGE.** Notwithstanding s. 971.29, if an
7 individual is charged with a covered crime, a prosecutor may not dismiss or amend
8 the charge without the approval of the court. In the application to the court, the
9 prosecutor shall state the reasons for the proposed amendment or dismissal. The
10 court may approve the application only if the court finds that the proposed
11 amendment or dismissal is consistent with the public's interest in deterring the
12 commission of covered crimes and consistent with the legislature's intent expressed
13 in sub. (1). If a court approves at least one application in a year, the court shall submit
14 to the appropriate standing committees of the legislature under s. 13.172 (3) an
15 annual report detailing each application the court approved that year and how each
16 approval is consistent with the public's interest and the legislature's intent.

17 **(4) NO DEFERRED PROSECUTION.** A prosecutor may not place a person in a
18 deferred prosecution program if the person is accused of or charged with a covered
19 crime.

20 **SECTION 9.** 968.075 (7) (c) of the statutes is created to read:

21 968.075 (7) (c) A policy indicating how the office may best execute the intent
22 of s. 967.056.

23 **SECTION 10.** 971.37 of the statutes is repealed.

24 **SECTION 11.** 971.38 (1) of the statutes is amended to read:

