# ROB HUTTON

STATE SENATOR | 5th DISTRICT

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March 4, 2025

TO: Members of the Assembly Committee on Judiciary

FR: Sen. Rob Hutton

RE: Assembly Bill 66

Thank you for holding a hearing on Assembly Bill 66. This bill places sensible checks on the dismissing or amending of charges for certain crimes and limits deferred prosecution agreements for those crimes.

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: 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 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.

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

March 4, 2025

To: Chairman Tusler and Members of the Assembly Judiciary Committee

From: Wisconsin Chiefs of Police Association

Re: Support Assembly Bill 66, Deferred Prosecution

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Chairman Tusler, thank you for your willingness to hold a hearing on this legislation. We would also like to thank the authors, Representative Jacobson and Senator Hutton for introducing this bill.

We ask for your support of Assembly Bill 66.

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.

Assembly Bill 66 prohibits a prosecutor from entering into a deferred prosecution agreement with a defendant who is or may be charged with serious crimes such as domestic abuse, sexual assault, theft of automobile, crimes against a child, illegal possession of a firearm, violation of an injunction and reckless driving that results in great bodily harm.

Each time deferred prosecution allows a dangerous person back into our communities it puts our communities and our officers at risk. Too often we have seen deferred prosecution agreements that result in serious injury or death. This bill creates accountability in our judicial system by prohibiting deferred prosecution for serious crimes.

The WCPA supports this legislation and asks that the committee move forward on Assembly Bill 66.

We would be happy to take any questions.

AMERICAN CIVIL LIBERTIES UNION
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March 4, 2025

Chair Tusler, Vice-Chair Jacobson, and Honorable Members of the Assembly Committee on Judiciary:

**The American Civil Liberties Union of Wisconsin appreciates the opportunity to provide testimony in opposition to Assembly Bill 66, Assembly Bill 85, and Assembly Bill 87.**

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.[1] 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,[2] Wisconsin also has a higher percentage of people incarcerated for crimes committed as youth than any state in the country except Louisiana.[3]

We all want to live in safe and healthy communities, and legislation proposing changes to the criminal legal system and access to democracy for those impacted by the system should be focused on the most effective approaches to achieving that goal. AB-66, AB-85, and AB-87 would take us several enormous steps in the wrong direction.

**Assembly Bill 66**

AB-66 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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[1] 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/

[2] 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.

[3] 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.

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,[4] resulting in countless collateral consequences[5] 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, AB-66 will exacerbate the downstream social and economic harms of overcriminalization to individuals, families, and communities.

**Assembly Bill 85**

This bill would require DOC to recommend revoking a person's probation, parole, or extended supervision for just being charged with–and not convicted of–a crime. In Wisconsin, the number or people on extended supervision exceeds the national average, and the typical length of supervision is nearly twice the national average.[6] As a report from the Badger Institute notes, "There is little evidence that society benefits from such lengthy periods of supervision."[7] Revocations are already the primary driver of incarceration in Wisconsin—revocations for rule violations and revocations resulting in new convictions accounted for an extraordinary 60% of the total 8,155 new prison admissions in 2024.[8]

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[4] "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/.

[5] 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.

[6] "The Wisconsin Community Corrections Story," Columbia University Justice Lab (January 2019), https://justicelab.columbia.edu/sites/default/files/content/Wisconsin%20Community%20Corrections%20Story%20final%20online%20copy.pdf.

[7] "Ex-Offenders Under Watch," Badger Institute (July 2019), https://www.badgerinstitute.org/wp-content/uploads/2022/08/RevocationPDF.pdf.

[8] https://doc.wi.gov/Pages/DataResearch/PrisonAdmissions.aspx

**Lowering the Constitutional Burden for Conviction**
Taking away discretion from DOC agents and automatically initiating an administrative revocation to send a person to prison for being charged with a crime raises constitutional concerns. If an individual on supervision is charged with a new crime, and as a result of this bill, the new crime is handled as an administrative revocation rather than a new circuit court case, the practical burden of proof required for a period of incarceration on a new charge would essentially become "probable cause" (the standard for issuing the charge itself) rather than "beyond a reasonable doubt."

The reality is the overwhelming majority of revocation proceedings decided by an administrative law judge result in re-incarceration. While AB-85 would mandate a revocation *recommendation*, in light of the conditions of release and the lower burdens and standards of the administrative revocation process, this functionally means mandatory revocation in most cases.

**Two Billion Dollar Price Tag**
According to the Fiscal Estimate completed by the Department of Corrections, for a previous iteration of this bill (2023 SB 309) this proposal would cost a fortune:

- **Over $1.7 million annually** for increased revocation cases adjudicated by the Department of Administration's Division of Hearings and Appeals;
- **$1.3 to $1.67 billion** for the construction of two new prisons to accommodate the significant increase in the incarcerated population;
- **Over $72.7 million** in increased operations costs during the first year of enactment
- **Over $209 million** in a permanent increased operations costs after the population is annualized during the second year of enactment.

Rather than spending billions in taxpayer dollars to trap people in a revolving door of incarceration and supervision, people on parole, probation, or extended supervision should be given the support and opportunities they need to thrive in their community.

<u>Assembly Bill 87</u>
In part, AB-87 would prevent people with felony convictions from regaining their constitutional right to vote until they have paid all "fines, costs, fees, surcharges, and restitution" imposed as part of their sentence. Put simply, this proposal would create a modern-day poll tax in Wisconsin.

Voting is the cornerstone of our democracy and the fundamental right upon which all our civil liberties rest. Before the Supreme Court outlawed them in the 1960s, poll taxes had been widespread in American elections throughout history, imposed as a means of systematically disenfranchising populations that those in power wanted to keep from voting – namely Black people, women, and poor people. Today, most Americans rightfully look back at poll taxes as a disgraceful and racist stain on our democracy, which is what makes the emerging effort to reinvent them for the 21st century so horrifying.

In light of the profound racial disparities in Wisconsin's criminal legal system mentioned at the beginning of this testimony, we know exactly who AB-87 will disenfranchise the most.

A patchwork of state felony disenfranchisement laws, varying in severity from state to state, prevent an estimated 4.4 million Americans with felony convictions from voting.[9] Confusion about and misapplication of these laws de facto disenfranchise countless other Americans.

Under current law, Wisconsinites who have past felony convictions can legally vote once they have finished serving their sentence and are no longer on probation, parole, or extended supervision—also known as being "off-paper." According to DOC, 45,060 people were on some form of supervision for a felony as of June 2024.[10] This means in addition to the 23,000 Wisconsinites incarcerated in DOC institutions, over 45,000 Wisconsinites are disenfranchised because they are "on paper." AB-87 would add the additional stipulation making restoration of their voting rights contingent upon the full repayment of any fines, costs, fees, surcharges, and restitution related to their convictions. In effect, the constitutional rights of thousands of people in Wisconsin would come at a cost.

The combined carceral debt of formerly incarcerated people in the United States adds up to about $50 billion.[11] This is a staggering figure, considering the average returning citizen with a job earns only a little more than $10,000 in their first year back in the community.

In Wisconsin, the mountain of system-imposed debt begins pre-trial, as state statutes give counties discretion to charge incarcerated people a fee for their incarceration, including booking fees or a daily rate for room and board. In 2019, Wisconsin Watch found that at least 23 Wisconsin counties assess "pay-to-stay" fees.[12] Further, Wisconsin jails and telecommunications companies extract more money from incarcerated people and their families, with rates for phone calls as high as $14.77 for a 15-minute call in some counties.[13] While the Federal Communications Commission voted to enact new rules to lower the cost of phone and video calls, the timeline for bringing prisons and jails into compliance could extend into 2026.

For individuals incarcerated in DOC institutions, their families often go into debt to help cover the cost of phone calls and electronic messages with loved ones and assist with the cost of basic needs items in commissary outside of the tiny bar of soap, tiny tube of toothpaste, and single stamped envelope received every two weeks. Notably, depending on job classification, those incarcerated in DOC institutions earn between $0.05 per hour to $0.12 per hour; and for a small proportion with extra security clearance, $0.42 per hour.

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[9] "Locked Out 2022: Estimates of People Denied Voting Rights Due to a Felony Conviction," The Sentencing Project (October 2022), https://www.sentencingproject.org/app/uploads/2024/03/Locked-Out-2022-Estimates-of-People-Denied-Voting.pdf.

[10] "Division of Community Corrections, 2024: A Year in Review," Wisconsin Department of Corrections, https://doc.wi.gov/DataResearch/DataAndReports/DCCYearInReview.pdf.

[11] "You've Served Your Time. Now Here's Your Bill," HuffPost (Sept. 2018), https://www.huffpost.com/entry/opinion-prison-strike-labor-criminal-justice_n_5b9bf1a1e4b013b0977a7d74.

[12] Izabela Zaluska, *Pay-to-stay, other fees, can put jail inmates hundreds or thousands in debt*, Wisconsin Watch (Sept. 15, 2019), https://wisconsinwatch.org/2019/09/pay-to-stay/.

[13] Wanda Bertram, *New data: Wisconsin jails and telecom giants profiting from high phone rates that keep families apart,* Prison Policy Initiative (Sept. 10, 2021), https://www.prisonpolicy.org/blog/2021/09/10/wisconsin-phones/.

AB-87 is presumably modeled after Florida's SB 7066—a bill signed into law to subvert Amendment 4, a referendum passed by voters to overturn a Jim Crow Era law and re-enfranchise formerly incarcerated people. Similar to Florida's disenfranchisement scheme, AB-87 would be extraordinarily difficult to implement because Wisconsin does not have a centralized database identifying the precise amount of an individual's financial obligation that must be satisfied for re-enfranchisement. This would make it nearly impossible for some individuals to determine what they owe, if anything, and whether they would be eligible to vote.

The ACLU of Wisconsin strongly urges committee members to vote against these proposals that would exacerbate mass incarceration and the damage it inflicts on our communities, our families, our economy, and our democracy.

**WISCONSIN STATE PUBLIC DEFENDERS**
Mission driven. Client centered.

Assembly Committee on Judiciary
March 4, 2025

Chair Tusler and committee members,

Thank you for the opportunity to provide our perspective on the bills before the committee today. We are submitting our testimony for Assembly Bill 66 and Assembly Bill 85 together – though they seek to alter two different points of the criminal legal process, they ultimately share the same outcome: limiting power of executive branch entities and restricting the essential role of discretion.

**Assembly Bill 66**

The Wisconsin State Public Defenders oppose this bill and the proposed limitations placed on dismissal or amendment of charges and the restriction of deferred prosecution agreements. This bill 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 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.

**Assembly Bill 85**

The Wisconsin State Public Defenders oppose this bill and its proposed automatic revocation recommendations. Under the bill, probation and parole agents must recommend revocation if someone on probation, parole, or extended supervision is simply *charged* with a crime, not convicted, disregarding the core tenet of "innocent until proven guilty." As a result of this bill, more clients will face revocation proceedings, which means there will be a higher demand on an already limited resource: attorneys for SPD appointments.

Looking beyond the issue of resources, this bill is similar to AB 66 in that it seeks to eliminate the ability to assess the facts and circumstances surrounding allegations as well as the personal circumstances of the individual. Many people who are on supervision suffer from mental health challenges, as well as addiction related challenges. These challenges are complex and relapses happen. Revocation is not always the best recommendation, especially for people with complex needs, nor is it always the recommendation that leads to increased safety for community members. Oftentimes, alternatives to revocation are a better way to address the person's mental health or recovery needs – even when the person is alleged to have committed a new crime – and when agents are able to work with the people they supervise to best meet their needs, our communities are safer and healthier.

**Conclusion**

Taken together, these bills represent an attempt to restrict discretion in the criminal legal system and replace it with a one-size-fits-all automatic charging and sentencing 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 and parole agents to thoughtfully review the circumstances and use evidence-based decisionmaking to draw a conclusion. Evidence-based practices are in the best interest of our clients and our communities, and we oppose the efforts 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.

# W D A A

Wisconsin District Attorneys' Association



December 15, 2023

Governor Tony Evers
PO Box 7863
Madison, WI 53707

Re: 2023 Assembly Bill 57

Governor Evers,

On behalf of prosecutors around the State of Wisconsin, thank you for vetoing Wisconsin Assembly Bill 57. We believe your veto will help prosecutors seek justice, support victims of crime and use evidenced-based decision making to provide the best programming and accountability to offenders. Your veto helps ensure the constitutional balances by protecting the discretion of prosecutors to make important, and often complex, decisions in the interest of justice in our communities. Furthermore, it continues to support the significant advancements we have made around Wisconsin in state and county Criminal Justice Coordinating Councils with the use and implementation of evidence-based decision making. We believe this veto will help keep victims safe, while also holding offenders accountable for their actions.

Again, on behalf of the Wisconsin District Attorneys' Association we appreciate your support and veto of Assembly Bill 57

Sincerely,

Melinda Tempelis
President-Elect