

August 22, 2023

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.