

2007 DRAFTING REQUEST

Bill

Received: 09/22/2006

Received By: chanaman

Wanted: As time permits

Identical to LRB:

For: James Kreuser (608) 266-5504

By/Representing: Lisa

This file may be shown to any legislator: NO

Drafter: chanaman

May Contact:

Addl. Drafters:

Subject: Criminal Law - miscellaneous

Extra Copies:

Submit via email: YES

Requester's email: Rep.Kreuser@legis.wisconsin.gov

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Definition of custody for purposes of escape

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	chanaman 09/27/2006	csicilia 10/19/2006		_____			S&L Crime
/1			nmatzke 10/20/2006	_____	lparisi 10/20/2006	cduerst 02/23/2007	

FE Sent For:

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<END>

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1/?	chanaman	↑ cis 10/19 OB	nwn 10/19	nwn/jf 10/20			

FE Sent For:

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Mark P. Dooley
Angelina Gabriele
Richard A. Ginkowski
Mary M. Hart
Crystal L. Jensen
Robin Pederson
Erica M. Reinke
Jason A. Rossell

Wm for Cathlene Hannaman

(d/11)

September 1, 2006

Representative James E. Kreuser
Post Office Box 8952
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Representative John P. Steinbrink
Post Office Box 8952
Madison, Wisconsin 53708

Representative Samatha Kerkman
Post Office Box 8952
Madison, Wisconsin 53708

State Senator Robert W. Wirsch
Post Office. Box 7882
Madison, Wisconsin 53707-7882

RECEIVED
SEP 06 2006

BY:.....

Dear Legislators:

On August 28, 2006 Probation and Parole Agents Kelly Brownson and Charles Sosinski went to Milwaukee to pick up a probation violator to transport him to the Kenosha County Jail – a fairly routine trip on most days.

This time it wasn't routine.

The violator – who was handcuffed and chained – was able to raise his belt chains above Agent Brownson's head. He wrapped them around her neck and began to choke her. He persisted – tightening his grip – until the agents relinquished the keys he demanded. A sheriff's detective in an unmarked car saw the state vehicle in the roadway and observed Agent Sosinski's attempts to summon assistance. The detective, Kenneth Santelli, located and apprehended the escapee.

The ending was fortunate in that the violator's unauthorized freedom was short-lived and Agent Brownson is here to be a witness against the defendant who is facing several charges. Unfortunately escape isn't one of them.

Generally speaking, Wisconsin's escape law – Wis. Stat. §946.42 – doesn't apply to "the custody of a probationer, parolee or person on extended supervision by the department of corrections" except, for example, if the person was committed to the county jail for a period of time as a condition of probation. Wis. Stat. §946.42(1)(a). This illogical exception flies in the face of the best interests of public safety as well as endangers hard-working probation and parole agents. This dangerous loophole must be closed and the sooner the better.

The incident I described above is particularly aggravated but it's far from the first one in southeastern Wisconsin.

For example, on September 26, 2000, probation and parole agents were transporting Deborah Zimmerman to the Racine County Jail after having taken her into custody for a violation of the terms of her release. At one point, she informed the agents she felt ill. When they stopped the vehicle to let her out, she fled. The agents and Racine County Sheriff's Deputies later found her at her residence where she was arrested for escape. Citing the exception in Wis. Stat. § 946.42(1)(a), the trial court threw out the escape charge – a decision upheld by the Court of Appeals which found that the escape law "does not specifically include being in the custody of a probation or parole agent." *State v. Zimmermann*, 2001 WI App. 238, 248 Wis.2d 370, 635 N.W.2d 864 (Ct.App. 2001).

This exception makes absolutely no sense. Someone arrested for a simple misdemeanor or even a traffic violation who jumps out of a patrol car en route to jail could be charged with and convicted of escape under Wis. Stat. §946.42 but a convicted felon in custody as a probation or parole violator who bolts from a probation and parole agent's van faces no such penalty. This is indescribably absurd.

I urge you at the first opportunity in the next legislative session to introduce legislation to forever close this dangerously silly loophole. Further, this legislation should include enhanced penalties for someone who assaults a law enforcement or correctional officer during the escape. (Probation and parole agents fall within the definition of a law enforcement officer.)

I will work with you every step of the way to right this wrong. I'll be happy to provide you with the language of the specific changes needed. I'll make myself or a member of my staff available to work with you and to testify, if necessary, before the appropriate committees. In short, we'll do what it takes to bring common sense to this law.

Please feel free to contact me. I appreciate your attention to this and pledge my full cooperation and support.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert D. Zapf". The signature is fluid and cursive, with the first name being the most prominent.

Robert D Zapf
District Attorney

RDZ:rag

cc: Secretary Matt Frank
Department of Corrections
Post Office Box 7925
Madison, Wisconsin 53707-7925



10/24

cjs

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

inserts

gen cat

1 AN ACT ...; relating to: escapes by persons on probation, parole, and extended
2 supervision and providing penalties.

Analysis by the Legislative Reference Bureau

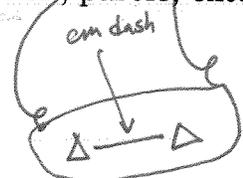
Current law prohibits a person who is in the custody of a law enforcement officer after being arrested from intentionally escaping from the officer's custody. A person who violates this prohibition may be fined not more than \$10,000, imprisoned for not more than nine months, or both, if the person was in custody based on a violation of a traffic regulation, an offense for which the penalty is a forfeiture, or a violation of a municipal ordinance. If the person escaping was in custody because he or she was charged with or has been convicted of a crime, the person may be fined not more than \$10,000, imprisoned for not more than six years, or both.

This bill prohibits a person on probation, parole, or extended supervision from escaping from his or her probation, parole, or extended supervision officer if the person has been detained based on a probation, parole, or extended supervision violation. The bill prohibits a person subject to proceedings under the juvenile justice code from escaping from a caseworker or an intake or dispositional services worker if the person has been detained based on a violation of a dispositional order or a condition of aftercare supervision. (Under *State v. Zimmerman*, 2001 WI App 238, 248 Wis. 2d 370, 635 N.W.2d 864, an escape of either type is not punishable as a separate offense, although it may result in other sanctions including the person being sent or returned to jail or prison (in the case of an adult) or being placed in a secure detention facility (in the case of a juvenile) if it constitutes a separate violation of the conditions of the person's probation, parole, extended supervision,

intentionally

*

(Ct.App. 2001)



currently

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This is a...
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dispositional order, or aftercare supervision). A person who violates this new prohibition may be fined not more than \$25,000, imprisoned for not more than ten years, or both. If the person who has custody over the person who escapes is injured during the escape, the imprisonment term may be increased by up to five years.

Because this bill creates a new crime or revises a penalty for an existing crime, the Joint Review Committee on Criminal Penalties may be requested to prepare a report concerning the proposed penalty and the costs or savings that are likely to result if the bill is enacted.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

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

1 SECTION 1. 946.42 (1) (a) of the statutes is renumbered 946.42 (1) (a) 1. (intro.)

2 and amended to read:

3 946.42 (1) (a) 1. (intro.) "Custody" includes without limitation actual all of the
4 following:

5 a. Actual custody of an institution, including a juvenile correctional facility, as
6 defined in s. 938.02 (10p), a secured residential care center for children and youth,
7 as defined in s. 938.02 (15g), a juvenile detention facility, as defined in s. 938.02 (10r),
8 a Type 2 residential care center for children and youth, as defined in s. 938.02 (19r),
9 a facility used for the detention of persons detained under s. 980.04 (1), a facility
10 specified in s. 980.065, or a juvenile portion of a county jail, ~~or actual.~~

11 b. Actual custody of a peace officer or institution guard. "Custody" also includes
12 the constructive

13 e. Constructive custody of persons placed on supervised release under ch. 980
14 and constructive .

15 f. Constructive custody of prisoners and juveniles subject to an order under s.
16 48.366, 938.183, 938.34 (4d), (4h), or (4m), or 938.357 (4) or (5) (e) temporarily outside
17 the institution whether for the purpose of work, school, medical care, a leave granted

1 under s. 303.068, a temporary leave or furlough granted to a juvenile, or otherwise.

2 Under s. 303.08 (6) it means, without limitation, that

3 g. Custody of the sheriff of the county to which the prisoner was transferred
4 after conviction. It

5 2. "Custody" does not include the constructive custody of a probationer, parolee,
6 or person on extended supervision by the department of corrections or a probation,
7 extended supervision, or parole officer or the ^{constructive} custody of a person who has been
8 released to aftercare supervision under ch. 938 unless the person is in actual custody
9 or is subject to a confinement order under s. 973.09 (4).

NOTE: NOTE: Par. (a) is shown as affected by 2 acts of the 2005 Wisconsin legislature and as merged by the revisor under s. 13.93 (2) (c).NOTE:

History: 1971 c. 164 s. 89; 1975 c. 39; 1977 c. 173, 312, 354, 418; 1985 a. 320; 1987 a. 27, 238, 352; 1987 a. 403 ss. 238, 239, 256; 1989 a. 31; 1993 a. 16, 377, 385, 491; 1995 a. 27 ss. 7233m, 7233p, 9126 (19); 1995 a. 77, 154, 352, 390; 1997 a. 35, 283; 1999 a. 9; 2001 a. 109; 2005 a. 344, 434; s. 13.93 (2) (c).

10 **SECTION 2.** 946.42 (1) (a) 1. c., d. and h. of the statutes are created to read:

11 946.42 (1) (a) 1. c. Actual custody or authorized physical control of a
12 probationer, parolee, or person on extended supervision by the department of
13 corrections.

14 d. Actual custody of a person authorized to take an individual into custody
15 under s. 938.355 (6d). ✓

16 ^hg. Custody of a person subject to a confinement order under s. 973.09 (4). ✓

17 **SECTION 3.** 946.42 (2m) of the statutes is created to read:

18 946.42 (2m) A person who is in the custody of a probation, parole, or extended
19 supervision officer based on an allegation or a finding ~~the~~ that person violated the
20 rules or conditions of probation, parole, or extended supervision and who
21 intentionally escapes from custody is guilty of a Class G felony. ✓

22 **SECTION 4.** 946.42 (2r) of the statutes is created to read:

23 946.42 (2r) Whoever, based on an allegation or a finding that the person
24 violated a condition of a dispositional order ~~listed~~ under s. 938.355 (2) (b) 7. or a

1 condition of aftercare supervision, is in the custody of a person authorized to take an
2 individual into custody under s. 938.355 (6d) and intentionally escapes from custody
3 is guilty of a Class G felony.

4 **SECTION 5.** 946.42 (4) of the statutes is created to read:

5 946.42 (4) If a person is convicted of an escape under this section, the maximum
6 term of imprisonment for the escape may be increased by ~~up to~~ 5 years if an
7 individual who had custody of the person who escaped is injured during the course
8 of the escape.

9

(END)

not more than ✓

INS
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INS A

no 9 This bill also allows the imprisonment term for an escape to be increased by up to five years if the person who has custody of the person escaping is injured during the escape.

Am 973.01 (2) (c) 2. a.

973.01 (c) 2. a. Sections 939.621, 939.632, 939.645, 961.46, and 961.49.

946.42 (4)

INS 4-9

INS
4-9

Duerst, Christina

From: Lundquist, Lisa
Sent: Friday, February 23, 2007 12:53 PM
To: LRB.Legal
Subject: Draft Review: LRB 07-0363/1 Topic: Definition of custody for purposes of escape

Please Jacket LRB 07-0363/1 for the ASSEMBLY.