



2007 ASSEMBLY BILL 144

March 5, 2007 - Introduced by Representatives SEIDEL, KREUSER, HRAYCHUCK, ALBERS, BIES, GUNDERSON, GUNDRUM, JESKEWITZ, MUSSER, NASS, NELSON, SHERIDAN and STASKUNAS, cosponsored by Senators WIRCH, ROESSLER, LASSA and LEHMAN. Referred to Committee on Corrections and Courts.

1 **AN ACT** *to renumber and amend* 946.42 (1) (a); *to amend* 973.01 (2) (c) 2. a. ;
2 and *to create* 946.42 (1) (a) 1. c., d. and h., 946.42 (2m), 946.42 (2r) and 946.42
3 (4) of the statutes; **relating to:** escapes by persons on probation, parole, and
4 extended 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 intentionally 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 intentionally 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 (Ct. App. 2001), an escape of either type is not currently punishable as a separate offense, although

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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, 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. 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.

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.~~

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1 f. Constructive custody of prisoners and juveniles subject to an order under s.
2 48.366, 938.183, 938.34 (4d), (4h), or (4m), or 938.357 (4) or (5) (e) temporarily outside
3 the institution whether for the purpose of work, school, medical care, a leave granted
4 under s. 303.068, a temporary leave or furlough granted to a juvenile, or otherwise.
5 Under s. 303.08 (6) it means, ~~without limitation, that~~

6 g. Custody of the sheriff of the county to which the prisoner was transferred
7 after conviction. ~~It~~

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

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

14 946.42 (1) (a) 1. c. Actual custody or authorized physical control of a
15 probationer, parolee, or person on extended supervision by the department of
16 corrections.

17 d. Actual custody of a person authorized to take an individual into custody
18 under s. 938.355 (6d).

19 h. Custody of a person subject to a confinement order under s. 973.09 (4).

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

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

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

