



2003 ASSEMBLY BILL 367

May 29, 2003 - Introduced by Representatives STASKUNAS, PETROWSKI, TAYLOR, LADWIG, MUSSER, NASS, ALBERS, M. LEHMAN, SERATTI, HAHN and HUBER, cosponsored by Senators STEPP, LASSA and PLALE. Referred to Committee on Criminal Justice.

1 **AN ACT** *to renumber and amend* 946.42 (1) (a); *to amend* 302.113 (2), 302.113
2 (4) and 973.15 (1); and *to create* 946.42 (1) (a) 1. e., 946.42 (5) and 973.15 (8)
3 (a) 1m. of the statutes; **relating to:** escapes from community-based residential
4 facilities by persons on conditional release and providing a penalty.

Analysis by the Legislative Reference Bureau

Under current law, a person who is confined in a jail, prison, secure juvenile facility, or other institution or is in the custody of a law enforcement officer may not intentionally escape from custody. If the person escaping was in custody based on his or her commission or alleged commission of a crime, the person may be fined up to \$10,000, sentenced to a term of imprisonment (consisting of a term of confinement in state prison followed by a term of extended supervision) of up to six years, or both. The prohibition on escapes applies to a person who has been found not guilty of a crime by reason of mental disease or defect (an NGI finding), but only if the Department of Health and Family Services (DHFS) has placed the person in an institution. It does not apply if the court has authorized the person to live in the community (conditional release) and the person escapes from a community-based residential facility (CBRF) selected as his or her community placement by DHFS (though an escape from a CBRF may constitute a violation of the order authorizing conditional release, which may result in the person being returned to or placed in an institution).

This bill extends the prohibition on escapes to a person on conditional release who escapes from a CBRF. The bill also addresses how a sentence for that offense

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may be served. Under current law, a sentence for a crime begins on the day on which it is imposed, unless the court orders that the defendant serve the sentence consecutive to another sentence that he or she is or will be serving. But, if a person is convicted of a new offense while he or she is committed to DHFS based on an NGI finding, his or her sentence for the new offense may not be served consecutive to the NGI commitment. Instead, the person's sentence of imprisonment or term of probation begins immediately. If the person is placed on probation, he or she may remain in a DHFS-designated institution or, if he or she is on conditional release, in a DHFS-designated CBRF. If the person is sentenced to a term of imprisonment, the Department of Corrections or the county jail may arrange for the person's placement in an institution through DHFS, but the person must otherwise be confined in prison or jail. He or she may not remain in the community. In any event, the period of the person's commitment to DHFS continues to run while he or she is serving the sentence for the new offense.

Under this bill, if the court sentences a person on conditioned release to jail or prison for escaping from a CBRF and the person is also ordered to return to or be placed in an institution for violating the terms of his or her conditional release (for example, because of the escape), the court may order that the person's commitment to DHFS be temporarily suspended until the person is no longer confined in connection with his or her conviction for the new offense. In addition, if the court sentences the person to prison or places the person on probation, the court may require the person to serve the term of extended supervision required as part of the prison sentence or serve the term of probation after the expiration or termination of the commitment order.

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.** 302.113 (2) of the statutes is amended to read:
2 302.113 (2) Except as provided in subs. (3) and (9) and s. 946.42 (5) (b), an
3 inmate subject to this section is entitled to release to extended supervision after he
4 or she has served the term of confinement in prison portion of the sentence imposed
5 under s. 973.01, as modified by the sentencing court under sub. (9g) or s. 302.045 (3m)
6 (b) 1. or 973.195 (1r), if applicable.

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1 **SECTION 2.** 302.113 (4) of the statutes is amended to read:

2 302.113 (4) All consecutive sentences imposed for crimes committed on or after
3 December 31, 1999, shall be computed as one continuous sentence. The Except as
4 provided under s. 946.42 (5) (b), the person shall serve any term of extended
5 supervision after serving all terms of confinement in prison.

6 **SECTION 3.** 946.42 (1) (a) of the statutes is renumbered 946.42 (1) (a) 1. (intro.)
7 and amended to read:

8 946.42 (1) (a) 1. (intro.) “Custody” includes, without limitation ~~actual,~~ any of
9 the following:

10 a. Actual custody of an institution, including a secured correctional facility, as
11 defined in s. 938.02 (15m), a secured child caring institution, as defined in s. 938.02
12 (15g), a secured group home, as defined in s. 938.02 (15p), a secure detention facility,
13 as defined in s. 938.02 (16), a Type 2 child caring institution, as defined in s. 938.02
14 (19r), or a juvenile portion of a county jail, ~~or,~~

15 b. Actual custody of a peace officer or institution guard ~~and constructive.~~

16 c. Constructive custody of prisoners and juveniles subject to an order under s.
17 48.366, 938.183, 938.34 (4d), (4h) or (4m) or 938.357 (4) or (5) (e) temporarily outside
18 the institution whether for the purpose of work, school, medical care, a leave granted
19 under s. 303.068, a temporary leave or furlough granted to a juvenile or otherwise.
20 Under s. 303.08 (6) it means, ~~without limitation,~~ that

21 d. Custody of the sheriff of the county to which the a prisoner was transferred
22 after conviction. ~~It under s. 303.08 (6).~~

23 2. “Custody” does not include the custody of a probationer, parolee or person
24 on extended supervision by the department of corrections or a probation, extended
25 supervision or parole officer or the custody of a person who has been released to

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1 aftercare supervision under ch. 938 unless the person is in actual custody or is
2 subject to a confinement order under s. 973.09 (4).

3 **SECTION 4.** 946.42 (1) (a) 1. e. of the statutes is created to read:

4 946.42 (1) (a) 1. e. Constructive custody of the department of health and family
5 services, if the person is placed, through an order for conditional release under s.
6 971.17 (3) or (4), in a community-based residential facility, as defined in s. 50.01 (1g).

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

8 946.42 (5) (a) If a court sentences a person to a county jail or house of correction
9 for an escape from custody as described in sub. (1) (a) 1. e., the court may stay the
10 commitment order entered with respect to that person under s. 971.17 (3) until the
11 completion of the person's sentence.

12 (b) If a court sentences a person to state prison for an escape from custody as
13 described in sub. (1) (a) 1. e., the court may stay the commitment order entered with
14 respect to that person under s. 971.17 (3) until the person is released to extended
15 supervision. If the court stays the commitment order under this paragraph, it may
16 order that the term of extended supervision be served upon the expiration or
17 termination of the commitment order.

18 (c) If a court places a person on probation for an escape from custody as
19 described in sub. (1) (a) 1. e., the court may order that term of probation commence
20 upon the expiration or termination of the commitment order entered with respect to
21 that person under s. 971.17 (3).

22 (d) Notwithstanding par. (a) or (b), if a court, as part of an order placing a person
23 in an institution under s. 971.17 (3) (e), has ordered that the person is not competent
24 to refuse medication or treatment for the person's mental condition, the order

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1 regarding the person's competency to refuse medication or treatment shall not be
2 stayed during the person's confinement under par. (a) or (b).

3 **SECTION 6.** 973.15 (1) of the statutes is amended to read:

4 973.15 (1) Except as provided in s. 973.032, all sentences to the Wisconsin state
5 prisons shall be for one year or more. Except as otherwise provided in this section
6 and s. 946.42 (5) (c), all sentences commence at noon on the day of sentence, but time
7 which elapses after sentence while the convicted offender is at large on bail shall not
8 be computed as any part of the term of imprisonment.

9 **SECTION 7.** 973.15 (8) (a) 1m. of the statutes is created to read:

10 973.15 (8) (a) 1m. With respect to a term of extended supervision under s.
11 946.42 (5) (b).

12 **SECTION 8. Initial applicability.**

13 (1) This act first applies to persons who, while committed to the department of
14 health and family services under section 971.17 of the statutes, escape from a
15 community-based residential facility, as defined in section 50.01 (1g) of the statutes,
16 on the effective date of this subsection.

17 (END)