

2001 ASSEMBLY BILL 851

February 26, 2002 – Introduced by Representative WALKER. Referred to Committee on Corrections and the Courts.

1 **AN ACT** *to renumber and amend* 946.42 (1) (a); *to amend* 946.42 (4) (a); and
2 *to create* 946.42 (1) (a) c., 946.42 (3m) and 946.42 (3r) of the statutes; **relating**
3 **to:** escapes by persons on probation, parole, extended supervision, or aftercare
4 supervision and providing penalties.

Analysis by the Legislative Reference Bureau

Under current law, a person who is in the custody of a law enforcement officer after being arrested may not intentionally escape from the officer's custody. A person who violates this prohibition may be fined not more than \$10,000 or 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 or imprisoned for not more than ten years or both. The sentence imposed in the latter case must be consecutive to any sentence previously or subsequently imposed for the offense for which the person was in custody when he or she escaped.

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. Similarly, 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

ASSEMBLY BILL 851

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, dispositional order, or aftercare supervision). A person who violates this new prohibition may be fined not more than \$10,000 or imprisoned for not more than ten years or both. In the case of an escape by an adult from a probation, parole, or extended supervision officer, any sentence imposed for the escape must be consecutive to the sentence for the offense for which the person was on probation, parole, or extended supervision when he or she escaped.

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 secured correctional facility, as
6 defined in s. 938.02 (15m), a secured child caring institution, as defined in s. 938.02
7 (15g), a secured group home, as defined in s. 938.02 (15p), a secure detention facility,
8 as defined in s. 938.02 (16), a Type 2 child caring institution, as defined in s. 938.02
9 (19r), or a juvenile portion of a county jail, ~~or~~

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

11 d. Constructive custody of prisoners and juveniles subject to an order under s.
12 48.366, 938.183, 938.34 (4d), (4h)₁ or (4m)₁ or 938.357 (4) or (5) (e) temporarily outside
13 the institution whether for the purpose of work, school, medical care, a leave granted

ASSEMBLY BILL 851

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 e. Custody of the sheriff of the a county to which the a prisoner was transferred
4 after conviction under s. 303.08 (6). It

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

10 **SECTION 2.** 946.42 (1) (a) c. of the statutes is created to read:

11 946.42 (1) (a) c. Actual custody of a probation, extended supervision, or parole
12 officer or a person authorized to take an individual into custody under s. 938.355 (6d).

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

14 946.42 (3m) A person who is in the custody of a probation, parole, or extended
15 supervision officer based on an allegation or a finding that the person violated the
16 rules or conditions of probation, parole, or extended supervision and who
17 intentionally escapes from custody is guilty of a Class D felony.

18 **SECTION 4.** 946.42 (3r) of the statutes is created to read:

19 946.42 (3r) Whoever, based on an allegation or a finding that the person
20 violated a condition of a dispositional order listed under s. 938.355 (2) (b) 7. or a
21 condition of aftercare supervision, is in the custody of a person authorized to take an
22 individual into custody under s. 938.355 (6d) and intentionally escapes from custody
23 is guilty of a Class D felony.

24 **SECTION 5.** 946.42 (4) (a) of the statutes is amended to read:

