

**2001 DRAFTING REQUEST**

**Bill**

Received: **12/04/2001**

Received By: **mdsida**

Wanted: **As time permits**

Identical to LRB:

For: **Scott Walker (608) 266-9180**

By/Representing: **Missy/Vince (Tues)**

This file may be shown to any legislator: **NO**

Drafter: **mdsida**

May Contact:

Addl. Drafters:

Subject: **Correctional System - ext superv  
Correctional System - parole  
Correctional System - probation  
Criminal Law - miscellaneous**

Extra Copies: **rpn  
rlr**

Submit via email: **YES**

Requester's email: **Rep.Walker@legis.state.wi.us**

Carbon copy (CC:) to:

---

**Pre Topic:**

No specific pre topic given

---

**Topic:**

Escapes by persons on parole, extended supervision, or probation

---

**Instructions:**

Amend statute so their escapes are prohibited, just like escapes by persons in police custody

---

**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>
/?	mdsida 02/13/2002	hhagen 02/14/2002					S&L
/1	mdsida 02/18/2002		jfrantze 02/15/2002		lrb_docadmin 02/15/2002	lrb_docadmin 02/15/2002	S&L

Vers.      Drafted      Reviewed      Typed      Proofed      Submitted      Jacketed      Required

/2		hhagen	kfollet	_____	lrb_docadmin	lrb_docadmin
		02/22/2002	02/22/2002	_____	02/22/2002	02/22/2002

FE Sent For:

<END>

"/2" 2/22/02  
by Greg

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/?	mdsida 02/13/2002	hhagen 02/14/2002					S&L
/1		12 hmh 2/22/02	jfrantze 02/15/2002		lrb_docadmin 02/15/2002	lrb_docadmin 02/15/2002	

*please re-jacket*

*KJ 2/22*      *KJ/PJ 2/22*

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/1			jfrantze 02/15/2002		lrb_docadmin 02/15/2002		

Vers.    Drafted    Reviewed    Typed    Proofed    Submitted    Jacketed    Required

FE Sent For:

**<END>**

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Wanted: As time permits

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Drafter: mdsida

May Contact:

Addl. Drafters:

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Correctional System - parole  
Correctional System - probation  
Criminal Law - miscellaneous

Extra Copies: rpn  
rlr

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1?	mdsida	1/21 hmkh 2/14/02	J 2/15	Self 2/15			

FE Sent For:

<END>

What is escape? ←

After case under 938?

Over lay? okay?

2/4

(S)

Mossy will have Vince call



Plc from Vince

use

- Same rules re custody of police officers



State of Wisconsin  
2001 - 2002 LEGISLATURE

LRB-4364/2

MGD: *handwritten initials*

*Handwritten initials in a circle*

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

*Soon*

*Generate*

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

***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. (An escape of this sort is not punishable under current law as a separate offense, although it may constitute a violation of the person's probation, parole, or extended supervision, which may result in the person being returned to prison, if he or she is on parole or extended supervision, or sent to prison or jail, if he or she is on probation). 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, and 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.

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

1           SECTION 1. 946.42 (3m) of the statutes is created to read:

2           946.42 (3m) A person who is in the custody of a probation, parole, or extended  
3 supervision officer based on an allegation or a finding that the person violated the  
4 rules or conditions of probation, parole, or extended supervision and who  
5 intentionally escapes from custody is guilty of a Class D felony.

6           SECTION 2. 946.42 (4) (a) of the statutes is amended to read:

7           946.42 (4) (a) Except as provided in par. (b), a court shall impose a sentence  
8 under this section consecutive to any sentence that the person was serving when he  
9 or she escaped or that was previously imposed or which ~~that~~ may be imposed for any  
10 crime or offense for which the person was in custody when he or she escaped.

11           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.

(END)

**Barman, Mike**

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**From:** Gilbert, Melissa  
**Sent:** Friday, February 15, 2002 11:12 AM  
**To:** LRB.Legal  
**Subject:** Draft review: LRB-4364/1 Topic: Escapes by persons on parole, extended supervision, or probation

It has been requested by <Gilbert, Melissa> that the following draft be jacketed for the ASSEMBLY:

Draft review: LRB-4364/1 Topic: Escapes by persons on parole, extended supervision, or probation

## Dsida, Michael

---

**From:** Gilbert, Melissa  
**Sent:** Friday, February 15, 2002 3:23 PM  
**To:** Dsida, Michael  
**Subject:** FW: escapes from P&P custody

Hi Mike,

Sorry to do this to you, but DOJ needs some changes to LRB 4364/1. Please see comments below. Guess I jumped the gun on jacketing, so I'll send that back to you ASAP.

Thanks,  
Missy

-----Original Message-----

**From:** Richard, JoAnna M.  
**Sent:** Friday, February 15, 2002 3:14 PM  
**To:** Gilbert, Melissa  
**Subject:** FW: escapes from P&P custody

Missy,

See below with some problems we have with the drafting.

Jo

-----Original Message-----

**From:** Crawford, Susan M.  
**Sent:** Friday, February 15, 2002 3:10 PM  
**To:** Richard, JoAnna M.  
**Cc:** Herman, Lara M.  
**Subject:** FW: escapes from P&P custody

Jo: see Lara's analysis. I agree with Lara that the proposed language creates ambiguity in that it conflicts with other language in the statute.

-----Original Message-----

**From:** Herman, Lara M.  
**Sent:** Friday, February 15, 2002 2:54 PM  
**To:** Crawford, Susan M.  
**Subject:** RE: escapes from P&P custody

Susan. I don't believe the language in the proposed legislation is adequate. The problem I see with the proposed language is that it conflicts with the existing language in 946.42(1)(a), or at least creates confusion.

As the court of appeals held in *State v. Zimmerman*, the case which prompted our request for this legislation, Wis. Stat. 946.42(1)(a) provides that "custody" does not include the custody of probationers or parolees by DOC or probation/parole officers "**unless** the person is in **actual custody**." Wis. Stat. 946.42(1)(a). And "actual custody" is limited by the statute and case law to mean custody of an institution, of a peace officer, or if an institution guard. Wis. Stat. 946.42(1)(a). The proposed legislation does nothing to fix the definition of "actual custody" in a way that includes probation/parole/extended supervision officers, and so I think it is confusing. The new language in the proposed legislation refers to a person who is "in the **custody** of a probation, parole or extended supervision officer . . .

" but this conflicts with the language of 946.42(1)(a) which allows an escape charge against probationers/parolees only if they are in "actual custody" because the proposed legislation does nothing to either amend the definition of "actual custody" to include probation, parole or extended supervision officers or to amend the third sentence of 946.42(1)(a) which requires probationers/parolees to be in "actual custody" or subject to a confinement order in order to face an escape charge.

In order to fix the loophole that essentially allows probationers/parolees to leave the custody of their agents without being subject to an escape charge, there are two things that can be done: **(1)** the definition of "actual custody" could be changed to include being in the custody of a probation, extended supervision or parole agent. That would be the easiest legislative change. The third sentence of 946.42(1)(a) would also have to be modified accordingly because it now reads:

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

The sentence could be deleted altogether if the definition of "actual custody" is modified.

or **(2)** If the legislature does not want to change the definition of "actual custody", it could change that third sentence to read:(my addition is in RED)

"[Custody] does not include the custody of a probationer, parolee or person on extended supervision by the department of corrections or a probation, extended supervision or parole officer or the custody of a person who has been released to aftercare supervision under ch. 938 unless the person is in actual custody [,] [ ] is subject to a confinement order under s. 973.09(4)[,] [**or is in the custody of a probation, extended supervision or parole officer pursuant to Wis. Admin Code DOC 328.22.] "**

Wis. Admin. Code DOC 328.22 allows probation/parole/extended supervision officers to take a probationer/parolee/person on extended supervision "into custody" for a variety of reasons, include alleged rule violation. The problem under current law that we are trying to fix with this legislation is that a probationer/parolee can basically run away from the parole/probation officer taking him/her "into custody" under their administrative code authority without consequence because it does not currently fall within the escape statute.

I am not convinced the proposed legislation goes far enough. I think it is a step in the right direction, but that another step is necessary: an amendment to the language in 946.42(1)(a) in one of the two ways suggested above.

Will you forward this to JoAnna or should I?

-----Original Message-----

From: Crawford, Susan M.  
Sent: Friday, February 15, 2002 2:08 PM

**To:** Herman, Lara M.  
**Subject:** RE: escapes from P&P custody

Lara: as I recall this request was prompted by a case you briefed. Is the language in this new (3m) sufficient to cover the situation raised in your case?

An answer to this question is probably all I need from you in terms of review. Of course if you spotted any other problem with the way it's worded please let me know.

Susan

-----Original Message-----

**From:** Richard, JoAnna M.  
**Sent:** Friday, February 15, 2002 1:57 PM  
**To:** Herman, Lara M.; Crawford, Susan M.  
**Subject:** FW: escapes from P&P custody  
**Importance:** High

Lara and Susan,

Can you review this legislative proposal. This is the one we asked for last summer.

Jo

-----Original Message-----

**From:** Gilbert, Melissa  
**Sent:** Friday, February 15, 2002 1:50 PM  
**To:** Richard, JoAnna M.  
**Subject:** escapes from P&P custody  
**Importance:** High

Hi Jo,

Could you take a look at the attached draft and let us know if it is OK? We'd like to put it on our Feb. 27 agenda.

<< File: LRB4364.P&Pcustody.2002.pdf >>

Thanks!

Missy

**Dsida, Michael**

---

**From:** Herman, Lara M.  
**Sent:** Tuesday, February 19, 2002 12:52 PM  
**To:** Dsida, Michael  
**Cc:** Richard, JoAnna M.; Crawford, Susan M.  
**Subject:** RE: Escape draft questions

Here are my responses to questions (1) and (3):

(1) No, I do not think the "actual custody" language in the last sentence of 946.42 (1)(a) is redundant, so I do not think it should be deleted. I think it is necessary language. The last sentence explains that probationers, parolees, and those on extended supervision are NOT in custody (because custody is defined in the first sentence as both "actual custody" and "constructive custody") UNLESS they are in actual custody, or subject to a confinement order. Thus, I think the "actual custody" reference in the last sentence is necessary to clarify that constructive custody is not enough for probationers, parolees, and those on extended supervision to be subject to an escape charge. I wouldn't remove the "actual custody" reference in the last sentence--I don't think it is redundant.

(3) I think there might be circumstances where a person is in an agent's custody after revocation before the person is sent to prison. I am not sure why you ask the question, but given that I think it is possible a person could be in an agent's custody before they are returned to jail/prison, I would recommend that you NOT include any language in the proposed bill that would preclude an escape charge after revocation by prior to return to prison.

Please let me know if you need anything further.

-----Original Message-----

**From:** Crawford, Susan M.  
**Sent:** Monday, February 18, 2002 4:40 PM  
**To:** Dsida, Michael  
**Cc:** Herman, Lara M.; Richard, JoAnna M.  
**Subject:** FW: Escape draft questions

Mike,

I am trying to figure out the answers to your questions because Lara Herman is out of the office today. Either she or I will try to get back to you tomorrow with more firm answers on (1) and (3). As to your questions (2) and (4):

(2), I see no problem with restating the conditions referred to in the rule.

(4), no petition for review is pending in Zimmerman as we believed legislation was required to fix this.

02/20/2002



Susan M. Crawford  
Assistant Attorney General  
Director, Criminal Appeals Unit  
Wisconsin Department of Justice  
(608) 267-2222 (phone)  
(608) 267-2223 (fax)

-----Original Message-----

**From:** Richard, JoAnna M.  
**Sent:** Monday, February 18, 2002 10:34 AM  
**To:** Herman, Lara M.  
**Cc:** Crawford, Susan M.  
**Subject:** FW: Escape draft questions

Lara,

I received these questions from Mike Dsida from the Legislative Reference Bureau. Can you take a stab at them?

Jo

-----Original Message-----

**From:** Dsida, Michael  
**Sent:** Monday, February 18, 2002 10:28 AM  
**To:** Richard, JoAnna M.  
**Subject:** Escape draft questions

Missy in Rep. Walker's office sent me Lara Herman's comments regarding LRB-4364. Missy also suggested that I send these questions directly to you:

1. In Zimmerman the court seemed to suggest that the phrase "actual custody" in the last sentence of s. 946.42 (1) (a) only applies to people who are confined in jail, a lockup, or some other facility pending or after revocation. That seems to make the "actual custody" clause redundant, since a person would already be covered by the first sentence through the "actual custody of an institution" language. In view of that, if I add language to the last sentence of the definition to cover the Zimmerman scenario, does it make sense to delete the "actual custody" language in that sentence?
2. We generally try to use cross-references to administrative rules in the statutes (although it is not an absolute prohibition). Would you have any objection to me restating the conditions listed in DOC 328.22 under which a person may be taken into custody instead of using a cross-reference to the rule?
3. Is a person ever in an agent's custody after revocation but before returning to prison? (I don't think so, but I want to make sure.)
4. Is there an appeal pending in Zimmerman? (This question is more out of curiosity than anything.)

Thanks.

Mike Dsida  
Legislative Reference Bureau  
608/266-9867  
michael.dsida@state.legis.wi.us

02/20/2002

**Dsida, Michael**

---

**From:** Dsida, Michael  
**Sent:** Thursday, February 21, 2002 9:01 AM  
**To:** Herman, Lara M.  
**Subject:** RE: Escape draft questions

I think that you are right. That eliminates the need to repeat what is in the administrative code in the third sentence. But I don't think that we should eliminate the third sentence altogether. Otherwise, I might have to create an exception to the new prohibition to specify that it doesn't apply if a person is only in custody by virtue of s. 973.10 (1) (or, if the truth in sentencing trailer bill ever passes, under s. 302.113 or 302.114). (I realize that Schaller and Zimmerman read the phrase "includes without limitation" to mean "means," but so long as those three words are still in the statute, the definition could be construed to include constructive custody of probationers.)

-----Original Message-----

**From:** Herman, Lara M.  
**Sent:** Wednesday, February 20, 2002 1:26 PM  
**To:** Dsida, Michael  
**Subject:** RE: Escape draft questions

Sure--it seems like a good idea to include this. It seems to me that the only way to include this, however, would be to amend the definition of "actual custody" to include the custody of a caseworker or other person authorized to take a juvenile into custody under 938.366(6d), and then amending 946.42(2) or (3) to include the penalty for this. That being said, maybe it makes sense to amend the "actual custody" language in the first sentence of 946.42(1)(a) to include both the custody of a probation/parole/extended supervision agent under Wis. Admin. Code. 328.22 and the custody of a caseworker or other person authorized to take a juvenile into custody under 938.366(6)(d)? Or how else were you thinking about adding this juvenile code provision to the escape statute language?

-----Original Message-----

**From:** Dsida, Michael  
**Sent:** Wednesday, February 20, 2002 12:06 PM  
**To:** Herman, Lara M.  
**Subject:** RE: Escape draft questions

Do you want to address escapes by someone on aftercare supervision under ch. 938 in the same way? Current law authorizes a caseworker or any other person authorized to provide or providing intake or dispositional services to take a juvenile offender into custody for a violation of a condition of aftercare supervision. See s. 938.355(6d)(b).

02/22/2002

**Dsida, Michael**

---

**From:** Herman, Lara M.  
**Sent:** Friday, February 22, 2002 1:53 PM  
**To:** Dsida, Michael  
**Subject:** RE: Escape draft questions

yea, it seems to me that we should address all juveniles taken into "custody" under 938.355(6d)

-----Original Message-----

**From:** Dsida, Michael  
**Sent:** Friday, February 22, 2002 1:51 PM  
**To:** Herman, Lara M.  
**Subject:** RE: Escape draft questions

I originally asked about juveniles in custody under s. 938.355(6d)(b) for a violation of a condition of aftercare supervision, because the custody definition only refers to aftercare. But do you also want to cover juveniles who are in custody under s. 938.355(6d) for violations of a dispositional order or a protection or services order?

02/22/2002



Stang (2)

2001 BILL

415 FRI

, or aftercare supervision

Requerate

- 1 AN ACT *to amend* 946.12 (1) (a); and *to create* 946.42 (3m) of the statutes;
- 2 relating to: escapes by persons on probation, parole, or extended supervision,
- 3 and providing a ~~penalty~~ *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. (An escape of this sort is not punishable under current law as a separate offense, although it may constitute a violation of the person's probation, parole, or extended supervision, which may result in the person being returned to prison, if he or she is on parole or extended supervision, or sent to prison or jail, if he or she is on~~

Analysis insert



2001-2002 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU

LRB-4364/2ins  
MGD:hmh:jf

1

**analysis insert**

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 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.

2

3

**INSERT 2/0**

X

4

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

5

and amended to read:

6

946.42 (1) (a) 1. (intro.) "Custody" includes without limitation ~~actual~~ all of the

7

following:

8

a. Actual custody of an institution, including a secured correctional facility, as

9

defined in s. 938.02 (15m), a secured child caring institution, as defined in s. 938.02

10

(15g), a secured group home, as defined in s. 938.02 (15p), a secure detention facility,

11

as defined in s. 938.02 (16), a Type 2 child caring institution, as defined in s. 938.02

12

(19r), or a juvenile portion of a county jail, ~~or,~~

13

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

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

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

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.

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

14 946.42 (1) (a) c. Actual custody of a probation, extended supervision, or parole  
 15 officer or a person authorized to take an individual into custody under s. 938.355 (6d).

16 **INSERT 2/5**

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

18 946.42 (3r) Whoever, based on an allegation or a finding that the person  
 19 violated a condition of a dispositional order listed under s. 938.355 (2) (b) 7. or a  
 20 condition of aftercare supervision, is in the custody of a person authorized to take an  
 21 individual into custody under s. 938.355 (6d) and intentionally escapes from custody  
 22 is guilty of a Class D felony.

**Emery, Lynn**

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**From:** Emery, Lynn  
**Sent:** Friday, February 22, 2002 4:32 PM  
**To:** Reiman, Greg  
**Subject:** LRB-4364/2 (attached as requested)

Lynn Emery

Program Asst. (PH. 608-266-3561)  
(E-Mail: [lynn.emery@legis.state.wi.us](mailto:lynn.emery@legis.state.wi.us))

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