

2001 ASSEMBLY BILL 903

March 14, 2002 – Introduced by Representatives STASKUNAS and KRUSICK. Referred to Committee on Corrections and the Courts.

1 **AN ACT** *to renumber and amend* 946.42 (1) (a); *to amend* 302.113 (2) and
2 973.15 (1); and *to create* 946.42 (1) (a) 1. e. and 946.42 (5) of the statutes;
3 **relating to:** escapes from community-based residential facilities by persons on
4 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 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 of a crime (underlying offense), the person may be fined not more than \$10,000 or imprisoned for not more than ten years or both. If the person was previously, or is later, convicted of the underlying offense, any sentence imposed for the escape must be consecutive to any sentence for the underlying offense. This consecutive sentence requirement does not apply if the person was, or is, adjudicated delinquent, found not competent to stand trial, or found not guilty by reason of mental disease or defect in connection with the underlying offense.

This bill prohibits a person who is on conditional release (a person who has been found not guilty of a crime by reason of mental disease or defect whom the court has authorized to live in the community) and who is placed in a community-based residential facility from escaping from that facility. Though not a crime under current law, an escape of this type may constitute a violation of the order authorizing conditional release, which may result in the person being returned to or placed in an institution. A person who violates this new prohibition may be fined not more than

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\$10,000 or imprisoned for not more than ten years or both. The bill also specifies that if the court sentences the person to jail or prison for the escape 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, as a result of the escape), the person must be confined in jail or prison as required under the escape sentence before being returned to or placed in the institution. If the court sentences the person to prison or places the person on probation, the person must 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.

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 s. 302.045 (3m) (b) 1., if
6 applicable.

7 **SECTION 2.** 946.42 (1) (a) of the statutes is renumbered 946.42 (1) (a) 1. (intro.)
8 and amended to read:

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

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

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

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

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).

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

14 946.42 (1) (a) 1. e. Constructive custody of the department of health and family
15 services, if the person is placed, through an order for conditional release under s.
16 971.17, in a community-based residential facility, as defined in s. 50.01 (1g).

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

18 946.42 (5) (a) If a court sentences a person to a county jail or house of correction
19 for an escape from custody as described in sub. (1) (a) 1. e., any order requiring the
20 person to be placed in an institution under s. 971.17 (3) (e) shall be stayed until the
21 completion of the person’s sentence.

22 (b) If a court sentences a person to prison for an escape from custody as
23 described in sub. (1) (a) 1. e., any order requiring the person to be placed in an
24 institution under s. 971.17 (3) (e) in connection with the shall be stayed until the
25 completion of the term of confinement portion of the person’s bifurcated sentence.

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1 The sentencing court shall order that the term of extended supervision be served
2 upon the expiration or termination of the commitment order.

3 (c) If a court places a person on probation for an escape from custody as
4 described in sub. (1) (a) 1. e., the person's conditional release order has been revoked,
5 and the person, as a result of that revocation, is placed in an institution under s.
6 971.17 (3) (e), the term of probation commences upon the person's conditional release
7 from the institution or the expiration of the commitment order, whichever occurs
8 first.

9 (d) Notwithstanding par. (a) or (b), if a court, as part of an order placing a person
10 in an institution under s. 971.17 (3) (e), has ordered that the person is not competent
11 to refuse medication or treatment for the person's mental condition, the order
12 regarding the person's competency to refuse medication or treatment shall not be
13 stayed during the person's confinement under par. (a) or (b).

14 **SECTION 5.** 973.15 (1) of the statutes is amended to read:

15 973.15 (1) Except as provided in s. 973.032, all sentences to the Wisconsin state
16 prisons shall be for one year or more. Except as otherwise provided in this section
17 and s. 946.42 (5) (c), all sentences commence at noon on the day of sentence, but time
18 which elapses after sentence while the convicted offender is at large on bail shall not
19 be computed as any part of the term of imprisonment.

20 **SECTION 6. Initial applicability.**

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

25

(END)