

### 2001 DRAFTING REQUEST

#### Bill

Received: 12/05/2001

Received By: mdsida

Wanted: As time permits

Identical to LRB:

For: Tony Staskunas (608) 266-0620

By/Representing: Adrienne

This file may be shown to any legislator: NO

Drafter: mdsida

May Contact:

Addl. Drafters:

Subject: Criminal Law - miscellaneous  
Mental Health - detent/commit

Extra Copies: rlr  
dak

Submit via email: YES

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

Carbon copy (CC:) to:

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#### Pre Topic:

No specific pre topic given

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#### Topic:

Escapes during conditional release

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#### Instructions:

See Attached

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#### 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>
/P1	mdsida 02/25/2002	jdyer 02/28/2002	jfrantze 02/28/2002	_____	lrb_docadmin 02/28/2002		S&L
/1	mdsida 03/06/2002	jdyer 03/06/2002	pgreensl 03/07/2002	_____	lrb_docadmin 03/07/2002	lrb_docadminS&L 03/07/2002	

@aitw

FE Sent For:

**<END>**

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/P1	mdsida 02/25/2002	jdye 02/28/2002	jfrantze 02/28/2002	3/7 sell	lrb_docadmin 02/28/2002		S&L

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1 3/6 jld  
3/7  
P8 <END>

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1?	mdsida	1/1 2/18 jld	1/22/28	1/22/28			

FE Sent For:

<END>

**Dsida, Michael**

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**From:** Ramirez, Adrienne  
**Sent:** Wednesday, November 28, 2001 3:54 PM  
**To:** Dsida, Michael  
**Subject:** drafting request

Mike -

We spoke several months ago regarding a draft Tony had requested pertaining to individuals escaping while on conditional release. I have not heard back from Milwaukee County Assistant DA Bob Donohoo. Therefore, Tony has reviewed some information and has decided to request several changes to the CBRF laws. I am not sure if these items should be included in one bill draft or four separate drafts. You decide which is best for drafting purposes.

Thanks for your help. Call if you have any questions.

Adrienne  
Office of Rep. Tony Staskunas  
6-0620

Bill drafts pertaining to CBRFs

3. Create a new crime for escape from a CBRF while on a conditional release. Clarify that escaping from conditional release is a separate criminal offense.

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# Mentally ill killer may be freed in '02

## Term up in June for man who fled halfway house

By DAVID DOEGE of the Journal Sentinel staff

Last Updated: Sept. 3, 2001

Vladimir Montecagudo may be on his way back to a mental hospital for walking away from the West Allis halfway house where he was supposed to serve the remainder of his court-ordered commitment for killing a woman, but the killer remains in line to walk out of the hospital a totally free man in nine months.

If Montecagudo, who has a long history of mental illness, returns to the Mendota Mental Health Institute and resumes being the good patient he was before he was released, there might be nothing to stop him from leaving next June when his commitment ends.

The state Department of Health and Family Services, which is charged with treating Montecagudo, only occasionally begins civil commitment proceedings for patients who have reached the end of their criminal commitments, according to department records. When it does, it must be able to prove that a patient on the verge of release will be a danger to himself or others if he does not continue receiving treatment.

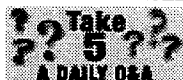
"The key there would be whether their treatment records show that they have been improving," explained Paul Harris, an attorney for the department. "Does it show that they are not making much progress or are they slipping back?"

"How much insight do they have into their condition or need for treatment? If they aren't regressing and they are cooperating with treatment, it would be a tough case to prove."

It was because Montecagudo was doing well at Mendota and his

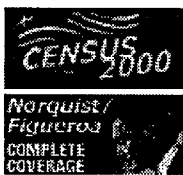
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commitment was about to lapse that he was placed in the halfway house in the first place, according to a psychiatrist who recommended the move.

"It's a pragmatic way of reintroducing people to the community after they have been hospitalized a long time," said psychiatrist George B. Palermo. "It's not a perfect system.

"All of us want to protect society. But the patients have these rights, and you have to think of them, too. Either you believe in that, or you lock them up and never let them out."

Monteagudo, 33, was committed to Mendota in 1990 after he was found not guilty by reason of mental disease in the Feb. 11, 1989, death of Aida Mercado, a 42-year-old woman who had befriended him because of his mental health problems.

According to trial testimony, the two were riding a bus over the 6th St. viaduct when Monteagudo got off, telling Mercado he had to obey voices telling him to kill himself. Mercado tried to stop him, telling him to kill her instead, according to the testimony. He did, throwing her into the Menomonee River during a struggle.

Because Monteagudo was not believed to have killed Mercado intentionally, he was committed to Mendota under the crime of first-degree reckless homicide, which at the time had a maximum term of imprisonment of 20 years.

Under state law, Monteagudo can be committed for no more than two-thirds of the maximum possible sentence for his crime. With credit for time served while awaiting trial, he has a mandatory release date of June 11, 2002, when he can leave without restrictions.

Palermo agreed with Mendota staff members that because Monteagudo's treatment had gone well and the state would lose control over him next June when his commitment lapses, he should be conditionally released to a halfway house with continued supervision and treatment.

"The idea is to put these people who were under total supervision, under strict control, into a place where they can gradually be exposed to the realities of life outside," Palermo told a reporter.

Palermo added, though, that an ideal place for someone like Monteagudo would be a halfway hospital with doctors and nurses. But nothing like that exists.

Monteagudo reportedly became paranoid during his brief stay at Ohio House, believing that members of Mercado's family were out to get him.

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"Many of these places (halfway houses), even though they are staffed with good people, they are not doctors who are there 24 hours a day."

Once his conditional discharge is formally revoked, something expected to occur this month, Mendota will resume control of Monteagudo until next spring, when the department must decide whether there is a basis for seeking a civil commitment.

Alan Tripp, forensic services supervisor for the department, said that last year 19 patients who were hospitalized under criminal commitments reached the maximum discharge date as Monteagudo will do in June. Civil commitments were sought for nine of those people, Tripp said.

Of the 350 people who were under conditional release from criminal commitments last year, just 24, or 7%, had their release revoked, Tripp said. Of those 24, according to Tripp, 10 committed new crimes; two of those 10 committed "assaultive crimes."

The reasons for losing a conditional release can be used as grounds in a civil commitment proceeding, according to Harris. But Monteagudo's infraction did not involve a new crime, so it would not be expected to carry much weight in a civil commitment hearing, according to an official familiar with the case.

### **'Jack the Ripper' defendant**

Officials also might face the same situation with another high-profile mental hospital patient next year.

Deborah Lee Kazuck, who was committed to the Winnebago Mental Health Institute in 1990 for attacking a man with an ax in hopes of bringing Jack the Ripper back to life, reaches her maximum discharge date Sept. 29, 2002. She last petitioned for a conditional release in 1995 and was turned down even though both mental health experts who examined her supported such a release.

The case against Kazuck, now 38, dates to May 1989, when she and two other women, Catherine Ann Lipsham and Ramona Estelle Barry, lured Jeffrey Meka to a south side apartment and tried to kill him with an ax.

Meka committed suicide in 1993. Lipsham and Barry pleaded guilty to attempted murder charges and were sentenced to five years in prison. They were paroled in 1993. Barry committed suicide in 1994.

Appeared in the Milwaukee Journal Sentinel on Sept. 4, 2001.

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State of Wisconsin  
2001 - 2002 LEGISLATURE

LRB-4366/8

MGD: n....

D-Note

JLD (P)

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

SPB

SPB

Gen

1 AN ACT ...; relating to: escapes from community-based residential facilities by  
2 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 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 (the 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. Although 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 \$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.

History: 1997 a. 283; 2001 a. 16.

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

9 946.42 (1) (a) 1. "Custody" includes, without limitation actual, any of the  
10 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.

(intro.)

(intro.)

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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 <sup>made</sup> ~~under s. 303.08 (6) It~~ ~~It~~ ~~is~~

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 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<sup>✓</sup>, in a community-based residential facility, as defined in s. 50.01 (1g)<sup>✓</sup>.

17           **SECTION 4.** 946.42 (5)<sup>x</sup> 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.<sup>✓</sup>, any order requiring the  
20 person to be placed in an institution under s. 971.17 (3) (e)<sup>✓</sup> 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.<sup>✓</sup>, 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

1 completion of the term of confinement portion of the person's bifurcated sentence.  
2 The sentencing court shall order that the term of extended supervision be served  
3 upon the expiration or termination of the commitment order.

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

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

History: 1975 c. 430; 1977 c. 353; 1977 c. 428 s. 115; 1983 a. 359; Sup. Ct. Order, 141 Wis. 2d xiii (1987); 1987 a. 394; 1989 a. 31, 142, 334, 359; Sup. Ct. Order, 158 Wis.  
2d xvii (1990); 1991 a. 39, 189, 269; 1993 a. 16, 98, 227; 1995 a. 7 s. 9126 (19); 1995 a. 417, 425, 440, 448; 1997 a. 35, 130, 181, 252, 275; 1999 a. 89.

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

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

History: 1973 c. 90; 1977 c. 347, 353, 447; 1981 c. 50, 292; 1983 a. 528; 1989 a. 31, 85; 1991 a. 39; 1993 a. 79; 1995 a. 390; 1997 a. 283.

21 **SECTION 6. Initial applicability.**

22 (1) This act first applies to persons who, while committed to the department of  
23 health and family services under section 971.17<sup>✓</sup> of the statutes, escape from a

1 community-based residential facility, as defined in section 50.01 (1g) of the statutes,  
2 on the effective date of this subsection.

3 (END)

**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

PI  
LRB-4366/3dn

MCD:.....  
1  
jld

Adrienne:

\* This bill requires that, if a person is sentenced to prison for the escape, he or she would serve the term of extended supervision (ES) after the commitment period for the other offense. (Other alternatives could entail having the person serve his or her ES time immediately after the term of confinement for the escape or after being released from the mental health institution where he or she has been committed or giving the court the authority to determine when it should be served.) I drafted the bill this way for two reasons. First, ES will probably entail less supervision than conditional release, and I thought it made sense to have the amount of supervision decrease over time. Second, if the person were on ES during his or her commitment to DHFS and his or her ES were revoked, the person would again be returned to prison, which could unduly complicate the completion of the commitment period. If you prefer some other alternative, however, please let me know.

Michael Dsida  
Legislative Attorney  
Phone: (608) 266-9867

**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRB-4366/P1dn  
MCD:jld:jf

February 28, 2002

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Michael Dsida  
Legislative Attorney  
Phone: (608) 266-9867



State of Wisconsin  
2001 - 2002 LEGISLATURE

LRB-4366/P1

MGD:jld:jf

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

Thurs

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- 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.

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***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.

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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,~~

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  
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11 aftercare supervision under ch. 938 unless the person is in actual custody or is  
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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)