CHAPTER 943

CRIMES AGAINST PROPERTY

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Cross−reference: See definitions in s. 939.22.

SUBCHAPTER I

DAMAGE

943.01 Damage to property. (1) Whoever intentionally causes damage to any physical property of another without the person's consent is guilty of a Class A misdemeanor.

(2) Any person violating sub. (1) under any of the following circumstances is guilty of a Class I felony:

(a) 1. In this paragraph, "highway" means any public way or thoroughfare, including bridges thereon, any roadways commonly used for vehicular traffic, whether public or private, any railroad, including street and interurban railways, and any navigable waterway or airport.

2. The property damaged is a vehicle or highway and the damage is of a kind which is likely to cause injury to a person or further property damage.

(b) The property damaged belongs to a public utility or common carrier and the damage is of a kind which is likely to impair the services of the public utility or common carrier.

(c) The property damaged belongs to a person who is or was a grand or petit juror and the damage was caused by reason of any verdict or indictment assented to by the owner.

(d) If the total property damaged in violation of sub. (1) is reduced in value by more than $2,500. For the purposes of this paragraph, property is reduced in value by the amount which it would cost either to repair or replace it, whichever is less.

(e) The property damaged is on state−owned land and is listed on the registry under sub. (5).

(f) 1. In this paragraph, "rock art site" means an archaeological site that contains paintings, carvings or other deliberate modifications of an immobile rock surface, such as a cave, overhang, boulder or bluff face, to produce symbols, stories, messages, designs or pictures. "Rock art site" includes artifacts and other cultural items, modified soils, bone and other objects of archaeological interest that are located adjacent to the paintings, carvings or other deliberate rock surface modifications.

2. The property damaged is a rock art site, any portion of a rock art site or any object that is part of a rock art site, if the rock art site is listed on the national register of historic places in Wisconsin, as defined in s. 44.31 (5), or the state register of historic places under s. 44.36.

(2d) (a) In this subsection, "plant research and development" means research regarding plants or development of plants, if the research or development is undertaken in conjunction or coordination with the state, a federal or local government agency, a university, or a private research facility.

(b) Any person violating sub. (1) under all of the following circumstances is guilty of a Class I felony:

1. The property damaged is a plant, material taken, extracted, or harvested from a plant, or a seed or other plant material that is being used or that will be used to grow or develop a plant.

2. The plant referred to in subd. 1. is or was being grown as feed for animals being used or to be used for commercial purposes, for other commercial purposes, or in conjunction with plant research and development.

(2g) Any person violating sub. (1) under all of the following circumstances is guilty of a Class I felony:

(a) The property damaged is a machine operated by the insertion of coins, currency, debit cards or credit cards.

(b) The person acted with the intent to commit a theft from the machine.

(c) The total property damaged in violation of sub. (1) is reduced in value by more than $500 but not more than $2,500. For purposes of this paragraph, property is reduced in value by the amount that it would cost to repair or replace it, whichever is less, plus other monetary losses associated with the damage.

(2m) Whoever causes damage to any physical property of another under all of the following circumstances is subject to a Class B forfeiture:

(a) The person does not consent to the damage of his or her property.

(b) The property damaged is on state−owned land and is listed on the registry under sub. (5).

(3) If more than one item of property is damaged under a single intent and design, the damage to all the property may be prosecuted as a single forfeiture offense or crime.

(4) In any case of unlawful damage involving more than one act of unlawful damage but prosecuted as a single forfeiture offense or crime, it is sufficient to allege generally that unlawful damage to property was committed between certain dates. At the trial, evidence may be given of any such unlawful damage that was committed on or between the dates alleged.

(5) The department of natural resources shall maintain a registry of prominent features in the landscape of state−owned land. To be included on the registry, a feature must have significant value to the people of this state.

History: 1977 c. 173; 1981 c. 118 s. 9; 1987 a. 399; 1993 a. 262, 486; 1995 a. 133, 208; 1997 a. 143; 2001 a. 16, 109.

To prove unlawful entry to a building with intent to commit a felony in violation of s. 943.10 (1) when the underlying felony was criminal damage to property in excess of $1,000, it was necessary to prove not only an intent to criminally damage property, but also that the damage to the property would exceed $1,000. Gilbertson v. State, 69 Wis. 2d 587, 230 N.W.2d 874 (1975).

Criminal damage to property is a lesser included offense of arson, s. 943.02. State v. Thompson, 146 Wis. 2d 554, 431 N.W.2d 716 (Ct. App. 1988).

A person can be convicted of criminal damage to property in which he or she has an ownership interest if someone else has an ownership interest. State v. Sevelin, 204 Wis. 2d 127, 554 N.W.2d 521 (Ct. App. 1996), 96−0729.

943.011 Damage or threat to property of witness. (1) In this section:

(a) "Family member" means a spouse, child, stepchild, foster child, treatment foster child, parent, sibling or grandchild.

NOTE: Par. (a) is amended by 2009 Wis. Act 28 eff. the date stated in the notice provided by the secretary of children and families and published in the Wisconsin Administrative Register under s. 48.62 (9) to read:

(a) "Family member" means a spouse, child, stepchild, foster child, parent, sibling, or grandchild.

(b) "Witness" has the meaning given in s. 940.41 (3).

(2) Whoever does any of the following is guilty of a Class I felony:

(a) Intentionally causes damage or threatens to cause damage to any physical property owned by a person who is or was a witness by reason of the owner having attended or testified as a witness and without the owner's consent.

(b) Intentionally causes damage or threatens to cause damage to any physical property owned by a person who is a family member of a witness or a person sharing a common domicile with a witness by reason of the witness having attended or testified as a witness and without the owner's consent.

History: 1997 a. 143; 2001 a. 109; 2009 a. 28.

943.012 Criminal damage to or graffiti on religious and other property. Whoever intentionally causes damage to, intentionally marks, draws or writes with ink or another substance on or intentionally etches into any physical property of another, without the person's consent and with knowledge of the character of the property, is guilty of a Class I felony if the property consists of one or more of the following:

(1) Any church, synagogue or other building, structure or place primarily used for religious worship or another religious purpose.

(2) Any cemetery, mortuary or other facility used for burial or memorializing the dead.

(3) Any school, educational facility or community center publicly identified as associated with a group of persons of a particular race, religion, color, disability, sexual orientation, national origin or ancestry or by an institution of any such group.

(4) Any personal property contained in any property under subs. (1) to (3) if the personal property has particular significance or value to any group of persons of a particular race, religion, color, disability, sexual orientation, national origin or ancestry and the actor knows the personal property has particular significance or value to that group.

History: 1987 a. 348; 1995 a. 24; 2001 a. 109.

943.013 Criminal damage; threat; property of judge. (1) In this section:

(a) "Family member" means a parent, spouse, sibling, child, stepchild, foster child or treatment foster child.

NOTE: Par. (a) is amended by 2009 Wis. Act 28 eff. the date stated in the notice provided by the secretary of children and families and published in the Wisconsin Administrative Register under s. 48.62 (9) to read:

(a) "Family member" means a parent, spouse, sibling, child, stepchild, or foster child.

(b) "Judge" means a supreme court justice, court of appeals judge, circuit court judge, municipal judge, temporary or permanent reserve judge, or circuit, supplemental, or municipal court commissioner.

(2) Whoever intentionally causes or threatens to cause damage to any physical property that belongs to a judge or his or her family member under all of the following circumstances is guilty of a Class I felony:

(a) At the time of the act or threat, the actor knows or should have known that the person whose property is damaged or threatened is a judge or a member of his or her family.

(b) The judge is acting in an official capacity at the time of the act or threat or the act or threat is in response to any action taken in an official capacity.

(c) There is no consent by the person whose property is damaged or threatened.

History: 1993 a. 50, 446; 2001 a. 61, 109; 2009 a. 28.

943.014 Demolition of historic building without authorization. (1) In this section, "historic building" means any building or structure that is listed on, or any building or structure within and contributing to a historic district that is listed on, the national register of historic places in Wisconsin or the state register of historic places or any building or structure that is included on a list of historic places designated by a city, village, town or county.

(2) Whoever intentionally demolishes a historic building without a permit issued by a city, village, town or county or with-

out an order issued under s. 66.0413 is guilty of a Class A misdemeanor.

(3) Subsection (2) does not apply to any person if he or she acts as part of a state agency action and the state agency has complied with ss. 44.39 to 44.42 regarding the action.

History: 1995 a. 466; 1999 a. 150 s. 672; 2001 a. 109.

943.015 Criminal damage; threat; property of department of revenue employee. (1) In this section, "family member" means a parent, spouse, sibling, child, stepchild, foster child or treatment foster child.

NOTE: Sub. (1) is amended by 2009 Wis. Act 28 eff. the date stated in the notice provided by the secretary of children and families and published in the Wisconsin Administrative Register under s. 48.62 (9) to read:

(1) In this section, "family member" means a parent, spouse, sibling, child, stepchild, or foster child.

(2) Whoever intentionally causes or threatens to cause damage to any physical property which belongs to a department of revenue official, employee or agent or his or her family member under all of the following circumstances is guilty of a Class I felony:

(a) At the time of the act or threat, the actor knows or should have known that the person whose property is damaged or threatened is a department of revenue official, employee or agent or a member of his or her family.

(b) The official, employee or agent is acting in an official capacity at the time of the act or threat or the act or threat is in response to any action taken in an official capacity.

(c) There is no consent by the person whose property is damaged or threatened.

History: 1985 a. 29; 1993 a. 446; 2001 a. 109; 2009 a. 28.

943.017 Graffiti. (1) Whoever intentionally marks, draws or writes with paint, ink or another substance on or intentionally etches into the physical property of another without the other person's consent is guilty of a Class A misdemeanor.

(2) Any person violating sub. (1) under any of the following circumstances is guilty of a Class I felony:

(a) The property under sub. (1) is a vehicle or a highway, as defined in s. 943.01 (2) (a) 1., and the marking, drawing, writing or etching is of a kind which is likely to cause injury to a person or further property damage.

(b) The property under sub. (1) belongs to a public utility or common carrier and the marking, drawing, writing or etching is of a kind which is likely to impair the services of the public utility or common carrier.

(c) The property under sub. (1) belongs to a person who is or was a grand or petit juror and the marking, drawing, writing or etching was caused by reason of any verdict or indictment assented to by the owner.

(d) If the total property affected in violation of sub. (1) is reduced in value by more than $2,500. For the purposes of this paragraph, property is reduced in value by the amount which it would cost to repair or replace it or to remove the marking, drawing, writing or etching, whichever is less.

(e) The property affected is on state−owned land and is listed on the registry under s. 943.01.

(2m) (a) In this subsection:

1. "Family member" means a spouse, child, stepchild, foster child, treatment foster child, parent, sibling or grandchild.

NOTE: Subd. 1. is amended by 2009 Wis. Act 28 eff. the date stated in the notice provided by the secretary of children and families and published in the Wisconsin Administrative Register under s. 48.62 (9) to read:

1. "Family member" means a spouse, child, stepchild, foster child, parent, sibling, or grandchild.

2. "Witness" has the meaning given in s. 940.41 (3).

(b) Whoever does any of the following is guilty of a Class I felony:

1. Intentionally marks, draws or writes with paint, ink or another substance on or intentionally etches into, or threatens to mark, draw or write on or etch into, any physical property owned by a person who is or was a witness by reason of the owner having attended or testified as a witness and without the owner's consent.

2. Intentionally marks, draws or writes with paint, ink or another substance on or intentionally etches into, or threatens to mark, draw or write on or etch into, any physical property owned by a family member of a witness or by a person sharing a common domicile with a witness by reason of the witness having attended or testified as a witness and without the owner's consent.

(3) (a) In addition to any other penalties that may apply to a crime under this section, the court may require that a convicted defendant perform 100 hours of community service work for an individual, a public agency or a nonprofit charitable organization. The court may order community service work that is designed to show the defendant the impact of his or her wrongdoing. The court shall allow the victim to make suggestions regarding appropriate community service work. If the court orders community service work, the court shall ensure that the defendant receives a written statement of the community service order and that the community service order is monitored.

(b) Any individual, organization or agency acting in good faith to whom or to which a defendant is assigned pursuant to an order under this subsection has immunity from any civil liability in excess of $25,000 for acts or omissions by or impacting on the defendant.

(c) This subsection applies whether the court imposes a sentence or places the defendant on probation.

(d) If the defendant is not placed on probation and the court orders community service work, the court shall specify in its order under this subsection the method of monitoring the defendant's compliance with this subsection and the deadline for completing the work that is ordered. The court shall inform the defendant of the potential penalties for noncompliance that would apply under s. 973.07.

(4) If more than one item of property is marked, drawn or written upon or etched into under a single intent and design, the markings, drawings or writings on or etchings into all of the property may be prosecuted as a single crime.

(5) In any case under this section involving more than one act of marking, drawing, writing or etching but prosecuted as a single crime, it is sufficient to allege generally that unlawful marking, drawing or writing on or etching into property was committed between certain dates. At the trial, evidence may be given of any such unlawful marking, drawing, writing or etching that was committed on or between the dates alleged.

History: 1995 a. 24; 1997 a. 35, 143; 2001 a. 16, 109; 2009 a. 28.

943.02 Arson of buildings; damage of property by explosives. (1) Whoever does any of the following is guilty of a Class C felony:

(a) By means of fire, intentionally damages any building of another without the other's consent; or

(b) By means of fire, intentionally damages any building with intent to defraud an insurer of that building; or

(c) By means of explosives, intentionally damages any property of another without the other's consent.

(2) In this section "building of another" means a building in which a person other than the actor has a legal or equitable interest which the actor has no right to defeat or impair, even though the actor may also have a legal or equitable interest in the building. Proof that the actor recovered or attempted to recover on a policy of insurance by reason of the fire is relevant but not essential to establish the actor's intent to defraud the insurer.

History: 1977 c. 173; 1993 a. 486; 2001 a. 109.

A mortgagee's interest is protected under sub. (1) (a); evidence of fire insurance was admissible to prove a violation of sub. (1) (a). State v. Phillips, 99 Wis. 2d 46, 298 N.W.2d 239 (Ct. App. 1980).

Criminal damage to property under s. 943.01 is a lesser−included offense of arson. State v. Thompson, 146 Wis. 2d 554, 431 N.W.2d 716 (Ct. App. 1988).

For purposes of this section, an explosive is any chemical compound, mixture, or device, the primary purpose for which is to function by explosion. An explosion is

a substantially instantaneous release of both gas and heat. State v. Brulport, 202 Wis. 2d 505, 551 N.W.2d 824 (Ct. App. 1996), 95−1687.

943.03 Arson of property other than building. Whoever, by means of fire, intentionally damages any property of another without the person's consent, if the property is not a building and has a value of $100 or more, is guilty of a Class I felony.

History: 1977 c. 173; 1999 a. 85; 2001 a. 109.

943.04 Arson with intent to defraud. Whoever, by means of fire, damages any property, other than a building, with intent to defraud an insurer of that property is guilty of a Class H felony. Proof that the actor recovered or attempted to recover on a policy of insurance by reason of the fire is relevant but not essential to establish the actor's intent to defraud the insurer.

History: 1977 c. 173; 1999 a. 85; 2001 a. 109.

943.05 Placing of combustible materials an attempt. Whoever places any combustible or explosive material or device in or near any property with intent to set fire to or blow up such property is guilty of an attempt to violate either s. 943.01, 943.012, 943.013, 943.02, 943.03 or 943.04, depending on the facts of the particular case.

History: 1987 a. 348; 1993 a. 50.

943.06 Molotov cocktails. (1) As used in this section, "fire bomb" means a breakable container containing a flammable liquid with a flash point of 150 degrees Fahrenheit or less, having a wick or similar device capable of being ignited, but does not mean a device commercially manufactured primarily for the purpose of illumination.

(2) Whoever possesses, manufactures, sells, offers for sale, gives or transfers a fire bomb is guilty of a Class H felony.

(3) This section shall not prohibit the authorized use or possession of any such device by a member of the armed forces or by fire fighters or law enforcement officers.

History: 1977 c. 173; 1985 a. 135 s. 83 (3); 2001 a. 109.

943.065 Injury caused by arson: treble damages. (1) Any person who incurs injury to his or her person or his, her or its business or property by reason of a violation of s. 943.02, 943.03, 943.04, 943.05 or 943.06, including the state or any municipality which incurs costs in extinguishing or investigating the cause of a fire under those circumstances, may sue the person convicted of the violation for damages. A court shall award treble damages, plus costs and attorney fees, to a person, including the state or a municipality, proving injury under this section. The damages, costs and fees are payable only by the person convicted of the violation. This section does not impose any duty upon a company providing insurance coverage to defend its insured in any action brought under this section.

(2) The treble damages requirement under sub. (1) applies in any wrongful death action under s. 895.03 based on a violation specified in sub. (1).

History: 1981 c. 78.

943.07 Criminal damage to railroads. (1) Whoever intentionally causes damage or who causes another person to damage, tamper, change or destroy any railroad track, switch, bridge, trestle, tunnel or signal or any railroad property used in providing rail services, which could cause an injury, accident or derailment is guilty of a Class I felony.

(2) Whoever intentionally shoots a firearm at any portion of a railroad train, car, caboose or engine is guilty of a Class I felony.

(3) Whoever intentionally throws, shoots or propels any stone, brick or other missile at any railroad train, car, caboose or engine is guilty of a Class B misdemeanor.

(4) Whoever intentionally throws or deposits any type of debris or waste material on or along any railroad track or right−of−way which could cause an injury or accident is guilty of a Class B misdemeanor.

History: 1975 c. 314; 1977 c. 173; 2001 a. 109.

SUBCHAPTER II

TRESPASS

943.10 Burglary. (1g) In this section:

(a) "Boat" means any ship or vessel that has sleeping quarters.

(b) "Motor home" has the meaning given in s. 340.01 (33m).

(1m) Whoever intentionally enters any of the following places without the consent of the person in lawful possession and with intent to steal or commit a felony in such place is guilty of a Class F felony:

(a) Any building or dwelling; or

(b) An enclosed railroad car; or

(c) An enclosed portion of any ship or vessel; or

(d) A locked enclosed cargo portion of a truck or trailer; or

(e) A motor home or other motorized type of home or a trailer home, whether or not any person is living in any such home; or

(f) A room within any of the above.

(2) Whoever violates sub. (1m) under any of the following circumstances is guilty of a Class E felony:

(a) The person is armed with a dangerous weapon or a device or container described under s. 941.26 (4) (a).

(b) The person is unarmed, but arms himself with a dangerous weapon or a device or container described under s. 941.26 (4) (a) while still in the burglarized enclosure.

(c) While the person is in the burglarized enclosure, he or she opens, or attempts to open, any depository by use of an explosive.

(d) While the person is in the burglarized enclosure, he or she commits a battery upon a person lawfully therein.

(e) The burglarized enclosure is a dwelling, boat, or motor home and another person is lawfully present in the dwelling, boat, or motor home at the time of the violation.

(3) For the purpose of this section, entry into a place during the time when it is open to the general public is with consent.

History: 1977 c. 173, 332; 1995 a. 288; 2001 a. 109; 2003 a. 189.

Stolen items may be introduced in evidence in a burglary prosecution as the items tend to prove that entry was made with intent to steal. Abraham v. State, 47 Wis. 2d 44, 176 N.W.2d 349 (1970).

Since attempted robbery requires proof of elements in addition to those elements required to prove burglary, they are separate and distinct crimes. State v. DiMaggio, 49 Wis. 2d 565, 182 N.W.2d 466 (1971).

The state need not prove that the defendant knew that his or her entry was without consent. Hanson v. State, 52 Wis. 2d 396, 190 N.W.2d 129 (1971).

The unexplained possession of recently stolen goods raises an inference that the possessor is guilty of theft, and also of burglary if the goods were stolen in a burglary, and calls for an explanation of how the possessor obtained the property. Gautreaux v. State, 52 Wis. 2d 489, 190 N.W.2d 542 (1971).

An information is defective if it charges entry into a building with intent to steal or to commit a felony, since these are different offenses. Champlain v. State, 53 Wis. 2d 751, 193 N.W.2d 868 (1972).

While intent to steal will not be inferred from the fact of entry alone, additional circumstances such as time, nature of place entered, method of entry, identity of the accused, conduct at the time of arrest, or interruption, and other circumstances, without proof of actual losses, can be sufficient to permit a reasonable person to conclude that the defendant entered with an intent to steal. State v. Barclay, 54 Wis. 2d 651, 196 N.W.2d 745 (1972).

Evidence that the defendant walked around a private dwelling knocking on doors, then broke the glass in one, entered, and when confronted offered no excuse, was sufficient to sustain a conviction for burglary. Raymond v. State, 55 Wis. 2d 482, 198 N.W.2d 351 (1972).

A burglary is completed after a door is pried open and entry made. It was no defense that the defendant had changed his mind and started to leave the scene when arrested. Morones v. State, 61 Wis. 2d 544, 213 N.W.2d 31 (1973).

Hiding in the false ceiling of the men's room, perfected by false pretenses and fraud, rendered an otherwise lawful entrance into a restaurant unlawful. Levesque v. State, 63 Wis. 2d 412, 217 N.W.2d 317 (1974).

Failure to allege lack of consent in an information charging burglary was not a fatal jurisdictional defect. Schleiss v. State, 71 Wis. 2d 733, 239 N.W.2d 68 (1976).

In a burglary prosecution, ordinarily once proof of entry is made, it is the defendant's burden to show consent. When a private residence is broken into at night, little evidence is required to support an inference of intent to steal. LaTender v. State, 77 Wis. 2d 383, 253 N.W.2d 221 (1977).

Entry into a hotel lobby open to the public, with intent to steal, is not burglary. Champlin v. State, 84 Wis. 2d 621, 267 N.W.2d 295 (1978).

Section 939.72 (3) does not bar convictions for possession of burglarious tools and burglary arising out of a single transaction. Dumas v. State, 90 Wis. 2d 518, 280 N.W.2d 310 (Ct. App. 1979).

Intent to steal is capable of being gleaned from the defendant's conduct and the circumstances surrounding it. State v. Bowden, 93 Wis. 2d 574, 288 N.W.2d 139 (1980).

Under the facts of the case, the defendant's employer did not give the defendant consent to enter the employer's premises after hours by providing the defendant with a key to the premises. State v. Schantek, 120 Wis. 2d 79, 353 N.W.2d 832 (Ct. App. 1984).

Felonies that form the basis of burglary charges include only offenses against persons and property. State v. O'Neill, 121 Wis. 2d 300, 359 N.W.2d 906 (1984).

To negate the intent to steal through the defense of "self−help" repossession of property stolen from the defendant, the money repossessed must consist of the exact coins and currency owed to him or her. State v. Pettit, 171 Wis. 2d 627, 492 N.W.2d 633 (Ct. App. 1992).

As used in sub. (2) (d), "battery" applies only to simple battery. Convictions for both intermediate battery under s. 940.19 (3) and burglary/battery under sub. (2) (d) did not violate double jeopardy. State v. Reynolds, 206 Wis. 2d 356, 557 N.W.2d 821 (Ct. App. 1996), 96−0265.

A firearm with a trigger lock is within the applicable definition of a dangerous weapon under s. 939.22 (10). State v. Norris, 214 Wis. 2d 25, 571 N.W.2d 857 (Ct. App. 1997), 96−2158.

Sub. (1) requires only an intent to commit a felony. There is not a unanimity requirement that the jury agree on the specific felony that was intended. State v. Hammer, 216 Wis. 2d 214, 576 N.W.2d 285 (Ct. App. 1997), 96−3084.

A nexus between the burglary and the weapon is not required for an armed burglary conviction. Being armed is a necessary separate element. That a nexus is not required does not violate due process and fundamental fairness. State v. Gardner, 230 Wis. 2d 32, 601 N.W.2d 670 (Ct. App. 1999), 98−2655.

The defendant's violation of the bail jumping statute by making an unauthorized entry into the initial crime victim's premises in violation of the defendant's bond with the purpose of intimidating the victim constituted a felony against persons or property that would support a burglary charge. State v. Semrau, 2000 WI App 54, 233 Wis. 2d 508, 608 N.W.2d 376, 98−3443.

A person commits a burglary by entering premises with the intent of committing a felony against persons or property while on the premises, regardless of whether the person's actions while within the premises constitute a new crime or the continuation of an ongoing offense. Felon in possession of a firearm in violation of s. 941.29 is a crime against persons or property that may be an underlying felony for a burglary charge. State v. Steele, 2001 WI App 34, 241 Wis. 2d 269, 625 N.W.2d 525, 00−0190.

Each paragraph of sub. (2) defines a complete stand−alone crime. Separate convictions under separate paragraphs arising from the same event do not constitute double jeopardy. State v. Beasley, 2004 WI App 42, 271 Wis. 2d 469, 678 N.W.2d 600, 02−2229.

943.11 Entry into locked vehicle. Whoever intentionally enters the locked and enclosed portion or compartment of the vehicle of another without consent and with intent to steal therefrom is guilty of a Class A misdemeanor.

History: 1977 c. 173.

943.12 Possession of burglarious tools. Whoever has in personal possession any device or instrumentality intended, designed or adapted for use in breaking into any depository designed for the safekeeping of any valuables or into any building or room, with intent to use such device or instrumentality to break into a depository, building or room, and to steal therefrom, is guilty of a Class I felony.

History: 1977 c. 173; 2001 a. 109.

A homemade key used to open parking meters is a burglarious tool. Perkins v. State, 61 Wis. 2d 341, 212 N.W.2d 141 (1973).

It was implausible that the defendant was looking for the home of an acquaintance in order to pick up some artwork while carrying a crowbar, a pair of gloves, and a pair of socks. Hansen v. State, 64 Wis. 2d 541, 219 N.W.2d 246 (1974).

Section 939.72 (3) does not bar convictions for possession of burglarious tools and burglary arising out of a single transaction. Dumas v. State, 90 Wis. 2d 518, 280 N.W.2d 310 (Ct. App. 1979).

The defendant's 2 prior convictions for burglary were admissible to prove intent to use gloves, a long pocket knife, a crowbar, and a pillow case as burglarious tools. Vanlue v. State, 96 Wis. 2d 81, 291 N.W.2d 467 (1980).

943.125 Entry into locked coin box. (1) Whoever intentionally enters a locked coin box of another without consent and with intent to steal therefrom is guilty of a Class A misdemeanor.

(2) Whoever has in personal possession any device or instrumentality intended, designed or adapted for use in breaking into any coin box, with intent to use the device or instrumentality to break into a coin box and to steal therefrom, is guilty of a Class A misdemeanor.

(3) In this section, "coin box" means any device or receptacle designed to receive money or any other thing of value. The term includes a depository box, parking meter, vending machine, pay telephone, money changing machine, coin−operated phonograph and amusement machine if they are designed to receive money or other thing of value.

History: 1977 c. 173.

943.13 Trespass to land. (1e) In this section:

(a) "Dwelling unit" means a structure or that part of a structure which is used or intended to be used as a home, residence or sleeping place by one person or by 2 or more persons maintaining a common household, to the exclusion of all others.

(az) "Implied consent" means conduct or words or both that imply that an owner or occupant of land has given consent to another person to enter the land.

(b) "Inholding" means a parcel of land that is private property and that is surrounded completely by land owned by the United States, by this state or by a local governmental unit or any combination of the United States, this state and a local governmental unit.

(c) "Local governmental unit" means a political subdivision of this state, a special purpose district in this state, an instrumentality or corporation of the political subdivision or special purpose district or a combination or subunit of any of the foregoing.

(d) "Place of employment" has the meaning given in s. 101.01 (11).

(e) "Private property" means real property that is not owned by the United States, this state or a local governmental unit.

(f) "Open land" means land that meets all of the following criteria:

1. The land is not occupied by a structure or improvement being used or occupied as a dwelling unit.

2. The land is not part of the curtilage, or is not lying in the immediate vicinity, of a structure or improvement being used or occupied as a dwelling unit.

3. The land is not occupied by a public building.

4. The land is not occupied by a place of employment.

(1m) Whoever does any of the following is subject to a Class B forfeiture:

(a) Enters any enclosed, cultivated or undeveloped land of another, other than open land specified in par. (e) or (f), without the express or implied consent of the owner or occupant.

(am) Enters any land of another that is occupied by a structure used for agricultural purposes without the express or implied consent of the owner or occupant.

(b) Enters or remains on any land of another after having been notified by the owner or occupant not to enter or remain on the premises.

(e) Enters or remains on open land that is an inholding of another after having been notified by the owner or occupant not to enter or remain on the land.

(f) Enters undeveloped private land from an abutting parcel of land that is owned by the United States, this state or a local governmental unit, or remains on such land, after having been notified by the owner or occupant not to enter or remain on the land.

(1s) In determining whether a person has implied consent to enter the land of another a trier of fact shall consider all of the circumstances existing at the time the person entered the land, including all of the following:

(a) Whether the owner or occupant acquiesced to previous entries by the person or by other persons under similar circumstances.

(b) The customary use, if any, of the land by other persons.

(c) Whether the owner or occupant represented to the public that the land may be entered for particular purposes.

(d) The general arrangement or design of any improvements or structures on the land.

(2) A person has received notice from the owner or occupant within the meaning of sub. (1m) (b), (e) or (f) if he or she has been notified personally, either orally or in writing, or if the land is posted. Land is considered to be posted under this subsection under either of the following procedures:

(a) If a sign at least 11 inches square is placed in at least 2 conspicuous places for every 40 acres to be protected. The sign must carry an appropriate notice and the name of the person giving the

notice followed by the word "owner" if the person giving the notice is the holder of legal title to the land and by the word "occupant" if the person giving the notice is not the holder of legal title but is a lawful occupant of the land. Proof that appropriate signs as provided in this paragraph were erected or in existence upon the premises to be protected prior to the event complained of shall be prima facie proof that the premises to be protected were posted as provided in this paragraph.

(b) If markings at least one foot long, including in a contrasting color the phrase "private land" and the name of the owner, are made in at least 2 conspicuous places for every 40 acres to be protected.

(3) Whoever erects on the land of another signs which are the same as or similar to those described in sub. (2) without obtaining the express consent of the lawful occupant of or holder of legal title to such land is subject to a Class C forfeiture.

(3m) An owner or occupant may give express consent to enter or remain on the land for a specified purpose or subject to specified conditions and it is a violation of sub. (1m) (a) or (am) for a person who received that consent to enter or remain on the land for another purpose or contrary to the specified conditions.

(4) Nothing in this section shall prohibit a representative of a labor union from conferring with any employee provided such conference is conducted in the living quarters of the employee and with the consent of the employee occupants.

(4m) This section does not apply to any of the following:

(a) A person entering the land, other than the residence or other buildings or the curtilage of the residence or other buildings, of another for the purpose of removing a wild animal as authorized under s. 29.885 (2), (3) or (4).

(b) A hunter entering land that is required to be open for hunting under s. 29.885 (4m) or 29.889 (7m).

(c) A person entering or remaining on any exposed shore area of a stream as authorized under s. 30.134.

(d) An assessor and an assessor's staff entering the land, other than a building, agricultural land or pasture, or a livestock confinement area, of another if all of the following apply:

1. The assessor or the assessor's staff enters the land in order to make an assessment on behalf of the state or a political subdivision.

2. The assessor or assessor's staff enters the land on a weekday during daylight hours, or at another time as agreed upon with the land owner.

3. The assessor or assessor's staff spends no more than one hour on the land.

4. The assessor or assessor's staff does not open doors, enter through open doors, or look into windows of structures on the land.

5. The assessor or the assessor's staff leaves in a prominent place on the principal building on the land, or on the land if there is not a principal building, a notice informing the owner or occupant that the assessor or the assessor's staff entered the land and giving information on how to contact the assessor.

6. The assessor or the assessor's staff has not personally received a notice from the owner or occupant, either orally or in writing, not to enter or remain on the premises.

(5) Any authorized occupant of employer−provided housing shall have the right to decide who may enter, confer and visit with the occupant in the housing area the occupant occupies.

History: 1971 c. 317; 1977 c. 173, 295; 1979 c. 32; 1983 a. 418; 1987 a. 27; 1989 a. 31; 1993 a. 342, 486; 1995 a. 45, 451; 1997 a. 248; 1999 a. 9; 2003 a. 33; 2009 a. 68.

The arrest of abortion protesters trespassing at a clinic did not violate their free speech rights. State v. Horn, 139 Wis. 2d 473, 407 N.W.2d 854 (1987).

Administrative code provisions requiring hunters to make reasonable efforts to retrieve game birds killed or injured do not exempt a person from criminal prosecution under sub. (1) (b) [now sub. (1m) (b)] for trespassing upon posted lands to retrieve birds shot from outside the posted area. 64 Atty. Gen. 204.

943.14 Criminal trespass to dwellings. Whoever intentionally enters the dwelling of another without the consent of some person lawfully upon the premises, under circumstances tending to create or provoke a breach of the peace, is guilty of a Class A misdemeanor.

History: 1977 c. 173.

Criminal trespass to a dwelling is not a lesser included offense of burglary. Raymond v. State, 55 Wis. 2d 482, 198 N.W.2d 351 (1972).

Regardless of any ownership rights in the property, if a person enters a dwelling that is another's residence, without consent, this section is violated. State v. Carls, 186 Wis. 2d 533, 521 N.W.2d 181 (Ct. App. 1994).

Entering an outbuilding accessory to a main house may be a violation. 62 Atty. Gen. 16.

943.145 Criminal trespass to a medical facility. (1) In this section, "medical facility" means a hospital under s. 50.33 (2) or a clinic or office that is used by a physician licensed under ch. 448 and that is subject to rules promulgated by the medical examining board for the clinic or office that are in effect on November 20, 1985.

(2) Whoever intentionally enters a medical facility without the consent of some person lawfully upon the premises, under circumstances tending to create or provoke a breach of the peace, is guilty of a Class B misdemeanor.

(3) This section does not prohibit any person from participating in lawful conduct in labor disputes under s. 103.53.

History: 1985 a. 56.

This provision is constitutional. State v. Migliorino, 150 Wis. 2d 513, 442 N.W.2d 36 (1989).

943.15 Entry onto a construction site or into a locked building, dwelling or room. (1) Whoever enters the locked or posted construction site or the locked and enclosed building, dwelling or room of another without the consent of the owner or person in lawful possession of the premises is guilty of a Class A misdemeanor.

(1m) This section does not apply to an assessor and an assessor's staff entering the construction site, other than buildings, of another if all of the following apply:

(a) The assessor or the assessor's staff enters the construction site in order to make an assessment on behalf of the state or a political subdivision.

(b) The assessor or assessor's staff enters the construction site on a weekday during daylight hours, or at another time as agreed upon by the land owner.

(c) The assessor or assessor's staff spends no more than one hour on the construction site.

(d) The assessor or assessor's staff does not open doors, enter through open doors, or look into windows of structures on the construction site.

(e) The assessor or the assessor's staff leaves in a prominent place on the principal building at the construction site, or on the land if there is not a principal building, a notice informing the owner or occupant that the assessor or the assessor's staff entered the construction site and giving information on how to contact the assessor.

(f) The assessor or the assessor's staff has not personally received a notice from the owner or occupant, either orally or in writing, not to enter or remain on the premises.

(2) In this section:

(a) "Construction site" means the site of the construction, alteration, painting or repair of a building, structure or other work.

(b) "Owner or person in lawful possession of the premises" includes a person on whose behalf a building or dwelling is being constructed, altered, painted or repaired and the general contractor or subcontractor engaged in that work.

(c) "Posted" means that a sign at least 11 inches square must be placed in at least 2 conspicuous places for every 40 acres to be protected. The sign must carry an appropriate notice and the name of the person giving the notice followed by the word "owner" if

the person giving the notice is the holder of legal title to the land on which the construction site is located and by the word "occupant" if the person giving the notice is not the holder of legal title but is a lawful occupant of the land.

History: 1981 c. 68; 2009 a. 68.

SUBCHAPTER III

MISAPPROPRIATION

943.20 Theft. (1) ACTS. Whoever does any of the following may be penalized as provided in sub. (3):

(a) Intentionally takes and carries away, uses, transfers, conceals, or retains possession of movable property of another without the other's consent and with intent to deprive the owner permanently of possession of such property.

(b) By virtue of his or her office, business or employment, or as trustee or bailee, having possession or custody of money or of a negotiable security, instrument, paper or other negotiable writing of another, intentionally uses, transfers, conceals, or retains possession of such money, security, instrument, paper or writing without the owner's consent, contrary to his or her authority, and with intent to convert to his or her own use or to the use of any other person except the owner. A refusal to deliver any money or a negotiable security, instrument, paper or other negotiable writing, which is in his or her possession or custody by virtue of his or her office, business or employment, or as trustee or bailee, upon demand of the person entitled to receive it, or as required by law, is prima facie evidence of an intent to convert to his or her own use within the meaning of this paragraph.

(c) Having a legal interest in movable property, intentionally and without consent, takes such property out of the possession of a pledgee or other person having a superior right of possession, with intent thereby to deprive the pledgee or other person permanently of the possession of such property.

(d) Obtains title to property of another person by intentionally deceiving the person with a false representation which is known to be false, made with intent to defraud, and which does defraud the person to whom it is made. "False representation" includes a promise made with intent not to perform it if it is a part of a false and fraudulent scheme.

(e) Intentionally fails to return any personal property which is in his or her possession or under his or her control by virtue of a written lease or written rental agreement after the lease or rental agreement has expired. This paragraph does not apply to a person who returns personal property, except a motor vehicle, which is in his or her possession or under his or her control by virtue of a written lease or written rental agreement, within 10 days after the lease or rental agreement expires.

(2) DEFINITIONS. In this section:

(ac) "Adult at risk" has the meaning given in s. 55.01 (1e).

(ad) "Elder adult at risk" has the meaning given in s. 46.90 (1) (br).

(ae) "Individual at risk" means an elder adult at risk or an adult at risk.

(ag) "Movable property" is property whose physical location can be changed, without limitation including electricity and gas, documents which represent or embody intangible rights, and things growing on, affixed to or found in land.

(am) "Patient" has the meaning given in s. 940.295 (1) (L).

(b) "Property" means all forms of tangible property, whether real or personal, without limitation including electricity, gas and documents which represent or embody a chose in action or other intangible rights.

(c) "Property of another" includes property in which the actor is a co−owner and property of a partnership of which the actor is a member, unless the actor and the victim are husband and wife.

(cm) "Resident" has the meaning given in s. 940.295 (1) (p).

(d) Except as otherwise provided in this paragraph, "value" means the market value at the time of the theft or the cost to the victim of replacing the property within a reasonable time after the theft, whichever is less. If the property stolen is a document evidencing a chose in action or other intangible right, "value" means either the market value of the chose in action or other right or the intrinsic value of the document, whichever is greater. If the property stolen is scrap metal, as defined in s. 134.405 (1) (f), "value" also includes any costs that would be incurred in repairing or replacing any property damaged in the theft or removal of the scrap metal. If the thief gave consideration for, or had a legal interest in, the stolen property, the amount of such consideration or value of such interest shall be deducted from the total value of the property.

(3) PENALTIES. Whoever violates sub. (1):

(a) If the value of the property does not exceed $2,500, is guilty of a Class A misdemeanor.

(bf) If the value of the property exceeds $2,500 but does not exceed $5,000, is guilty of a Class I felony.

(bm) If the value of the property exceeds $5,000 but does not exceed $10,000, is guilty of a Class H felony.

(c) If the value of the property exceeds $10,000, is guilty of a Class G felony.

(d) If any of the following circumstances exists, is guilty of a Class H felony:

1. The property is a domestic animal.

3. The property is taken from a building which has been destroyed or left unoccupied because of physical disaster, riot, bombing or the proximity of battle.

4. The property is taken after physical disaster, riot, bombing or the proximity of battle has necessitated its removal from a building.

5. The property is a firearm.

6. The property is taken from a patient or resident of a facility or program under s. 940.295 (2) or from an individual at risk.

(e) If the property is taken from the person of another or from a corpse, is guilty of a Class G felony.

(4) USE OF PHOTOGRAPHS AS EVIDENCE. In any action or proceeding for a violation of sub. (1), a party may use duly identified and authenticated photographs of property which was the subject of the violation in lieu of producing the property.

History: 1977 c. 173, 255, 447; 1983 a. 189; 1987 a. 266; 1991 a. 39; 1993 a. 213, 445, 486; 2001 a. 16, 109; 2005 a. 388; 2007 a. 64.

Cross−reference: Misappropriation of funds by contractor or subcontractor as theft, see s. 779.02 (5).

If one person takes property from the person of another, and a 2nd person carries it away, the evidence may show a theft from the person under subs. (1) (a) and (3) (d) 2., either on a theory of conspiracy or of complicity. Hawpetoss v. State, 52 Wis. 2d 71, 187 N.W.2d 823 (1971).

Theft is a lesser included offense of robbery. Moore v. State, 55 Wis. 2d 1, 197 N.W.2d 820 (1972).

Attempted theft by false representation (signing another's name to a car purchase contract) is not an included crime of forgery (signing the owner's name to a car title to be traded in). State v. Fuller, 57 Wis. 2d 408, 204 N.W.2d 452 (1973).

Under sub. (1) (d), it is not necessary that the person who parts with property be induced to do so by a false and fraudulent scheme; the person must be deceived by a false representation that is part of such a scheme. Schneider v. State, 60 Wis. 2d 765, 211 N.W.2d 511 (1973).

In abolishing the action for breach of promise to marry, the legislature did not sanction either civil or criminal fraud by the breaching party against the property of a duped victim. Restrictions on civil actions for fraud are not applicable to related criminal actions. Lambert v. State, 73 Wis. 2d 590, 243 N.W.2d 524 (1976).

Sub. (1) (a) should be read in the disjunctive so as to prohibit both the taking of, and the exercise of unauthorized control over, property of another. The sale of stolen property is thus prohibited. State v. Genova, 77 Wis. 2d 141, 252 N.W.2d 380 (1977).

The state may not charge a defendant under sub. (1) (a) in the disjunctive by alleging that the defendant took and carried away or used or transferred. Jackson v. State, 92 Wis. 2d 1, 284 N.W.2d 685 (Ct. App. 1979).

Circumstantial evidence of owner nonconsent was sufficient to support a jury's verdict. State v. Lund, 99 Wis. 2d 152, 298 N.W.2d 533 (1980).

Section 943.20 (1) (e) does not unconstitutionally imprison one for debt. State v. Roth, 115 Wis. 2d 163, 339 N.W.2d 807 (Ct. App. 1983).

A person may be convicted under s. 943.20 (1) (a) for concealing property and be separately convicted for transferring that property. State v. Tappa, 127 Wis. 2d 155, 378 N.W.2d 883 (1985).

A violation of sub. (1) (d) does not require proof that the accused personally received property. State v. O'Neil, 141 Wis. 2d 535, 416 N.W.2d 77 (Ct. App. 1987).

"Obtains title to property," as used in sub. (1) (d), includes obtaining property under a lease by fraudulent misrepresentation. State v. Meado, 163 Wis. 2d 789, 472 N.W.2d 567 (Ct. App. 1991).

The federal tax on a fraudulently obtained airline ticket was properly included in its value for determining whether the offense was a felony under sub. (3). State v. McNearney, 175 Wis. 2d 485, N.W.2d (Ct. App. 1993).

The definition of "bailee" under s. 407.102 (1) is not applicable to sub. (1) (b); definitions of "bailment" and are "bailee" discussed. State v. Kuhn, 178 Wis. 2d 428, 504 N.W.2d 405 (Ct. App. 1993).

When the factual basis for a plea to felony theft does not establish the value of the property taken, the conviction must be set aside and replaced with a misdemeanor conviction. State v. Harrington, 181 Wis. 2d 985, 512 N.W.2d 261 (Ct. App. 1994).

The words "uses," "transfers," "conceals," and "retains possession" in sub. (1) (b) are not synonyms describing the crime of theft but describe separate offenses. A jury must be instructed that there must be unanimous agreement on the manner in which the statute was violated. State v. Seymour, 183 Wis. 2d 682, 515 N.W.2d 874 (1994).

Theft from the person includes theft of a purse from the handle of an occupied wheelchair. State v. Hughes, 218 Wis. 2d 538, 582 N.W.2d 49 (Ct. App. 1998), 97−0638.

When the victim had pushed her purse against a car door with her leg and the defendant's action caused her to fall back, dislodging the purse, his act of taking it constituted taking property from the victim's person under sub. (3) (d) 2. State v. Graham, 2000 WI App 138, 237 Wis. 2d 620, 614 N.W.2d 504, 99−1960.

Multiple convictions for the theft of an equal number of firearms arising from one incident did not violate the protection against double jeopardy. State v. Trawitzki, 2001 WI 77, 244 Wis. 2d 523, 628 N.W.2d 801, 99−2234.

Agency is not necessarily an element of theft by fraud when the accused obtains another person's property through an intermediary. State v. Timblin, 2002 WI App 304, 259 Wis. 2d 299, 657 N.W.2d 89, 02−0275.

Multiple charges and multiple punishments for separate fraudulent acts was not multiplicitous. State v. Swinson, 2003 WI App 45, 261 Wis. 2d 633, 660 N.W.2d 12, 02−0395.

A party to a business transaction has a duty to disclose a fact when: 1) the fact is material to the transaction; 2) the party with knowledge of the fact knows the other party is about to enter into the transaction under a mistake as to the fact; 3) the fact is peculiarly and exclusively within the knowledge of one party, and the mistaken party could not reasonably be expected to discover it; and 4) on account of the objective circumstances, the mistaken party would reasonably expect disclosure of the fact. If a duty to disclose exists, failure to disclose is a representation under sub. (1) (d). State v. Ploeckelman, 2007 WI App 31, 299 Wis. 2d 251, 729 N.W.2d 784, 06−1180.

The intent of the "from the person" penalty enhancer under sub. (3) (e) was to cover circumstances that made stealing particularly dangerous and undesirable. Although the cash register the defendant was attempting to steal was not connected to the manager at the register, at the time of the attempted theft the manager was within arm's reach of the defendant while the defendant was smashing the register and was in constructive possession of the money when the attempted theft occurred even if the money was not physically touching her person. The manager's constructive possession of the money made this a particularly dangerous and undesirable theft. State v. Tidwell, 2009 WI App 153, 321 Wis. 2d 596, 774 N.W.2d 650, 08−2846.

A landlord who failed to return or account for a security deposit ordinarily could not be prosecuted under this section. 60 Atty. Gen. 1.

State court rulings that unauthorized control was sufficient to support a conviction under sub. (1) (d) were not an unlawful broadening of the offense so as to deprive the defendant of notice and the opportunity to defend. Hawkins v. Mathews, 495 F. Supp. 323 (1980).

Sub. (1) (b) was intended to target those entrusted with the property of another who retain or use that property in a way that does not comport with the owner's wishes. The statute applies only to those who are entrusted with custody or possession or money or property. It does not apply to a breach of contract case over whether a purchaser has met contractual conditions for obtaining a refund. Azamat v. American Express Travel Related Services Company, Inc. 426 F. Supp. 2d 888 (2006).

943.201 Unauthorized use of an individual's personal identifying information or documents. (1) In this section:

(a) "Personal identification document" means any of the following:

1. A document containing personal identifying information.

2. An individual's card or plate, if it can be used, alone or in conjunction with another access device, to obtain money, goods, services, or any other thing of value or benefit, or if it can be used to initiate a transfer of funds.

3. Any other device that is unique to, assigned to, or belongs to an individual and that is intended to be used to access services, funds, or benefits of any kind to which the individual is entitled.

(b) "Personal identifying information" means any of the following information:

1. An individual's name.

2. An individual's address.

3. An individual's telephone number.

4. The unique identifying driver number assigned to the individual by the department of transportation under s. 343.17 (3) (a) 4.

5. An individual's social security number.

6. An individual's employer or place of employment.

7. An identification number assigned to an individual by his or her employer.

8. The maiden name of an individual's mother.

9. The identifying number of a depository account, as defined in s. 815.18 (2) (e), of an individual.

10. An individual's taxpayer identification number.

11. An individual's deoxyribonucleic acid profile, as defined in s. 939.74 (2d) (a).

12. Any of the following, if it can be used, alone or in conjunction with any access device, to obtain money, goods, services, or any other thing of value or benefit, or if it can be used to initiate a transfer of funds:

a. An individual's code or account number.

b. An individual's electronic serial number, mobile identification number, personal identification number, or other telecommunications service, equipment, or instrument identifier.

c. Any other means of account access.

13. An individual's unique biometric data, including fingerprint, voice print, retina or iris image, or any other unique physical representation.

14. Any other information or data that is unique to, assigned to, or belongs to an individual and that is intended to be used to access services, funds, or benefits of any kind to which the individual is entitled.

15. Any other information that can be associated with a particular individual through one or more identifiers or other information or circumstances.

(2) Whoever, for any of the following purposes, intentionally uses, attempts to use, or possesses with intent to use any personal identifying information or personal identification document of an individual, including a deceased individual, without the authorization or consent of the individual and by representing that he or she is the individual, that he or she is acting with the authorization or consent of the individual, or that the information or document belongs to him or her is guilty of a Class H felony:

(a) To obtain credit, money, goods, services, employment, or any other thing of value or benefit.

(b) To avoid civil or criminal process or penalty.

(c) To harm the reputation, property, person, or estate of the individual.

(3) It is an affirmative defense to a prosecution under this section that the defendant was authorized by law to engage in the conduct that is the subject of the prosecution. A defendant who raises this affirmative defense has the burden of proving the defense by a preponderance of the evidence.

(4) If an individual reports to a law enforcement agency for the jurisdiction which is the individual's residence that personal identifying information or a personal identifying document belonging to the individual reasonably appears to be in the possession of another in violation of this section or that another has used or has attempted to use it in violation of this section, the agency shall prepare a report on the alleged violation. If the law enforcement agency concludes that it appears not to have jurisdiction to investigate the violation, it shall inform the individual which law enforcement agency may have jurisdiction. A copy of a report prepared under this subsection shall be furnished upon request to the individual who made the request, subject to payment of any reasonable fee for the copy.

History: 1997 a. 101; 2001 a. 109; 2003 a. 36.

A violation of sub. (2) is a continuing offense. State v. Ramirez, 2001 WI App 158, 246 Wis. 2d 802, 633 N.W.2d 656, 00−2605.

Because bail is statutorily defined as "monetary conditions of release," and can be expressed as cash, a bond, or both, one who misappropriates another's identity and uses it to obtain lower bail in a criminal case has done so to obtain credit or money within the meaning of this section. State v. Peters, 2003 WI 88, 263 Wis. 2d 475, 665 N.W.2d 171, 01−3267.

A violation of this section is a continuing offense that is complete when the defendant performs the last act that, viewed alone, is a crime. An offense continues after fraudulently obtained phone and credit accounts are closed only if the defendant received a "thing of value or benefit" after the accounts are closed. Here, once those

accounts were closed, the benefits to the defendant ended. State v. Lis, 2008 WI App 82, 311 Wis. 2d 691, 751 N.W.2d 891, 07−2357.

Although the purpose of harming an individual's reputation is an element of identity theft, the statute does not directly punish for the intent to defame and indirectly punish for disclosure of defamatory information, in violation of the 1st Amendment. This section criminalizes the whole act of using someone's identity without permission plus using the identity for one of the enumerated purposes, including harming another's reputation. The statute does not criminalize each of its component parts standing alone. This section neither prohibits the defendant from disseminating information about a public official nor prevents the public from receiving that information. State v. Baron, 2008 WI App 90, 312 Wis. 2d 789, 754 N.W.2d 175, 07−1289.

As applied in this case, sub. (2) (c) is content based and regulates speech because whether the defendant's conduct was prohibited depended entirely upon whether the defendant's speech, i.e., the content of e−mails sent using another individual's identity, was intended to be reputation−harming to that other individual. The statute survives strict scrutiny because the statute is narrowly tailored to apply only when the defendant intentionally uses an individual's personal information to harm that individual's reputation. The statute does not prevent revealing reputation−harming information so long as the method chosen does not entail pretending to be the targeted individual. State v. Baron, 2009 WI 58, 318 Wis. 2d 60, 769 N.W.2d 34, 07−1289.

943.203 Unauthorized use of an entity's identifying information or documents. (1) In this section:

(a) "Entity" means a person other than an individual.

(b) "Identification document" means any of the following:

1. A document containing identifying information.

2. An entity's card or plate, if it can be used, alone or in conjunction with another access device, to obtain money, goods, services, or any other thing of value or benefit, or if it can be used to initiate a transfer of funds.

3. Any other device that is unique to, assigned to, or belongs to an entity and that is intended to be used to access services, funds, or benefits of any kind to which the entity is entitled.

(c) "Identifying information" means any of the following information:

1. An entity's name.

2. An entity's address.

3. An entity's telephone number.

4. An entity's employer identification number.

5. The identifying number of an entity's depository account, as defined in s. 815.18 (2) (e).

6. Any of the following, if it can be used, alone or in conjunction with any access device, to obtain money, goods, services, or any other thing of value or benefit, or if it can be used to initiate a transfer of funds:

a. An entity's code or account number.

b. An entity's electronic serial number, mobile identification number, entity identification number, or other telecommunications service, equipment, or instrument identifier.

c. Any other means of account access.

7. Any other information or data that is unique to, assigned to, or belongs to an entity and that is intended to be used to access services, funds, or benefits of any kind to which the entity is entitled.

8. Any other information that can be associated with a particular entity through one or more identifiers or other information or circumstances.

(2) Whoever, for any of the following purposes, intentionally uses, attempts to use, or possesses with intent to use any identifying information or identification document of an entity without the authorization or consent of the entity and by representing that the person is the entity or is acting with the authorization or consent of the entity is guilty of a Class H felony:

(a) To obtain credit, money, goods, services, or anything else of value or benefit.

(b) To harm the reputation or property of the entity.

(3) It is an affirmative defense to a prosecution under this section that the defendant was authorized by law to engage in the conduct that is the subject of the prosecution. A defendant who raises this affirmative defense has the burden of proving the defense by a preponderance of the evidence.

(4) If an entity reports to a law enforcement agency for the jurisdiction in which the entity is located that identifying information or an identification document belonging to the entity reasonably appears to be in the possession of another in violation of this section or that another has used or has attempted to use it in violation of this section, the agency shall prepare a report on the alleged violation. If the law enforcement agency concludes that it appears not to have jurisdiction to investigate the violation, it shall inform the entity which law enforcement agency may have jurisdiction. A copy of a report prepared under this subsection shall be furnished upon request to the entity that made the request, subject to payment of any reasonable fee for the copy.

History: 2003 a. 36, 320.

943.205 Theft of trade secrets. (1) Whoever with intent to deprive or withhold from the owner thereof the control of a trade secret, or with intent to appropriate a trade secret to his or her own use or the use of another not the owner, and without authority of the owner, does any of the following may be penalized as provided in sub. (3):

(a) Takes, uses, transfers, conceals, exhibits or retains possession of property of the owner representing a trade secret.

(b) Makes or causes to be made a copy of property of the owner representing a trade secret.

(c) Obtains title to property representing a trade secret or a copy of such property by intentionally deceiving the owner with a false representation which is known to be false, made with intent to defraud, and which does defraud the person to whom it is made. "False representation" includes a promise made with intent not to perform if it is a part of a false and fraudulent scheme.

(2) In this section:

(a) "Copy" means any facsimile, replica, photograph or other reproduction of any property and any notation, drawing or sketch made of or from any property.

(b) "Owner" includes a co−owner of the person charged and a partnership of which the person charged is a member, unless the person charged and the victim are husband and wife.

(c) "Property" includes without limitation because of enumeration any object, material, device, substance, writing, record, recording, drawing, sample, specimen, prototype, model, photograph, micro−organism, blueprint or map, or any copy thereof.

(d) "Representing" means disclosing, embodying, describing, depicting, containing, constituting, reflecting or recording.

(e) "Trade secret" has the meaning specified in s. 134.90 (1) (c).

(3) Anyone who violates this section is guilty of a Class I felony.

(4) In a prosecution for a violation of this section it shall be no defense that the person charged returned or intended to return the property involved or that the person charged destroyed all copies made.

(5) This section does not prevent anyone from using skills and knowledge of a general nature gained while employed by the owner of a trade secret.

History: 1977 c. 173; 1983 a. 189; 1985 a. 236; 1993 a. 213, 486; 1997 a. 254; 2001 a. 109.

An insurance agency's customer list was not a trade secret. Corroon & Black v. Hosch, 109 Wis. 2d 290, 325 N.W.2d 883 (1982).

Pricing policies, cost markups, and the amount of a company's bid for a particular project were not trade secrets. Wisconsin Electric Power Co. v. PSC, 110 Wis. 2d 530, 329 N.W.2d 178 (1983).

21st Century White Collar Crime: Intellectual Property Crimes in the Cyber World. Simon & Jones. Wis. Law. Oct. 2004.

943.206 Definitions. In this section and ss. 943.207 to 943.209:

(1) "Manufacturer" means a person who transfers sounds to a recording.

(2) "Owner" means the person who owns sounds in or on a recording from which the transferred recorded sounds are directly or indirectly derived.

(3) "Performance" means a recital, rendering or playing of a series of words or other sounds, either alone or in combination with images or physical activity.

(4) "Performance owner" means the performer or performers or the person to whom the performer or performers have transferred, through a contract, the right to sell recordings of a performance.

(5) "Recording" means a medium on or in which sounds or images or both are stored.

History: 1999 a. 51, 186.

943.207 Transfer of recorded sounds for unlawful use. (1) Whoever does any of the following may be penalized as provided in sub. (3m):

(a) Intentionally transfers, without the consent of the owner, any sounds first embodied in or on a recording before February 15, 1972, with intent to sell or rent the recording into or onto which such sounds are transferred for commercial advantage or private financial gain.

(b) Advertises, offers for sale or rent, sells, rents or possesses a recording with knowledge that sounds have been transferred into or onto it in violation of par. (a).

(c) Transports a recording within this state for commercial advantage or private financial gain with knowledge that sounds have been transferred into or onto the recording in violation of par. (a).

(3m) (a) Whoever violates this section is guilty of a Class A misdemeanor under any of the following circumstances:

1. If the person transfers sounds into or onto fewer than 1,000 recordings or advertises, offers for sale or rent, sells, rents, possesses or transports fewer than 1,000 recordings in violation of sub. (1) during a 180−day period, and the value of the recordings does not exceed $2,500.

2. If the person transfers sounds on or to the Internet in violation of sub. (1), the transferred sounds are never replayed or are replayed by others from the Internet fewer than 1,000 times during a 180−day period, and the value of the transferred sounds does not exceed $2,500.

(b) Whoever violates this section is guilty of a Class I felony under any of the following circumstances:

1. If the person transfers sounds into or onto fewer than 1,000 recordings or advertises, offers for sale or rent, sells, rents, possesses or transports fewer than 1,000 recordings in violation of sub. (1) during a 180−day period, and the value of the recordings exceeds $2,500.

2. If the person transfers sounds on or to the Internet in violation of sub. (1), the transferred sounds are replayed by others from the Internet fewer than 1,000 times during a 180−day period, and the value of the transferred sounds involved in the violation exceeds $2,500.

(c) Whoever violates this section is guilty of a Class H felony under any of the following circumstances:

1. If the person transfers sounds into or onto at least 1,000 recordings or advertises, offers for sale or rent, sells, rents, possesses or transports at least 1,000 recordings in violation of sub. (1) during a 180−day period.

2. If the person transfers sounds on or to the Internet in violation of sub. (1) and the transferred sounds are replayed by others from the Internet at least 1,000 times during a 180−day period.

3. If the violation occurs after the person has been convicted under this section.

(4) This section does not apply to:

(a) The transfer by a cable television operator or radio or television broadcaster of any recorded sounds, other than from the sound track of a motion picture, intended for, or in connection with, broadcast or other transmission or related uses, or for archival purposes.

(b) The transfer of any video tape or nonvideo audio tape intended for possible use in a civil or criminal action or special proceeding in a court of record.

History: 1975 c. 300; 1977 c. 173; 1999 a. 51; 2001 a. 109.

943.208 Recording performance without consent of performance owner. (1) Whoever does any of the following for commercial advantage or private financial gain may be penalized as provided in sub. (2):

(a) Creates a recording of a performance without consent of the performance owner and with intent to sell or rent the recording.

(b) Advertises, offers for sale or rent, sells, rents or transports a recording of a performance with knowledge that the sounds, images or both from the performance embodied in the recording were recorded without the consent of the performance owner.

(c) Possesses with intent to advertise, offer for sale or rent, sell, rent or transport a recording of a performance with knowledge that the sounds, images or both from the performance embodied in the recording were recorded without the consent of the performance owner.

(2) (a) Whoever violates sub. (1) is guilty of a Class A misdemeanor if the person creates, advertises, offers for sale or rent, sells, rents, transports or possesses fewer than 1,000 recordings embodying sound or fewer than 100 audiovisual recordings in violation of sub. (1) during a 180−day period, and the value of the recordings does not exceed $2,500.

(b) Whoever violates sub. (1) is guilty of a Class I felony if the person creates, advertises, offers for sale or rent, sells, rents, transports or possesses fewer than 1,000 recordings embodying sound or fewer than 100 audiovisual recordings in violation of sub. (1) during a 180−day period, and the value of the recordings exceeds $2,500.

(c) Whoever violates sub. (1) is guilty of a Class H felony if the person creates, advertises, offers for sale or rent, sells, rents, transports or possesses at least 1,000 recordings embodying sound or at least 100 audiovisual recordings in violation of sub. (1) during a 180−day period or if the violation occurs after the person has been convicted under this section.

(3) Under this section, the number of recordings that a person rents shall be the sum of the number of times in which each individual recording is rented.

History: 1999 a. 51; 2001 a. 109.

943.209 Failure to disclose manufacturer of recording. (1) Whoever does any of the following for commercial advantage or private financial gain may be penalized as provided in sub. (2):

(a) Knowingly advertises, offers for sale or rent, sells, rents or transports a recording that does not contain the name and address of the manufacturer in a prominent place on the cover, jacket or label of the recording.

(b) Possesses with intent to advertise, offer for sale or rent, sell, rent or transport a recording that does not contain the name and address of the manufacturer in a prominent place on the cover, jacket or label of the recording.

(2) (a) Whoever violates sub. (1) is guilty of a Class A misdemeanor if the person advertises, offers for sale or rent, sells, rents, transports or possesses fewer than 100 recordings in violation of sub. (1) during a 180−day period, and the value of the recordings does not exceed $2,500.

(b) Whoever violates sub. (1) is guilty of a Class I felony if the person advertises, offers for sale or rent, sells, rents, transports or possesses fewer than 100 recordings in violation of sub. (1) during a 180−day period, and the value of the recordings exceeds $2,500.

(c) Whoever violates sub. (1) is guilty of a Class H felony if the person advertises, offers for sale or rent, sells, rents, transports or possesses at least 100 recordings in violation of sub. (1) during

a 180−day period or if the violation occurs after the person has been convicted under this section.

(3) Under this section, the number of recordings that a person rents shall be the sum of the number of times that each individual recording is rented.

History: 1999 a. 51; 2001 a. 109.

943.21 Fraud on hotel or restaurant keeper, recreational attraction, taxicab operator, or gas station. (1c) In this section, "recreational attraction" means a public accommodation designed for amusement and includes chair lifts or ski resorts, water parks, theaters, entertainment venues, racetracks, swimming pools, trails, golf courses, carnivals, and amusement parks.

(1m) Whoever does any of the following may be penalized as provided in sub. (3):

(a) Having obtained any beverage, food, lodging, ticket or other means of admission, or other service or accommodation at any campground, hotel, motel, boarding or lodging house, restaurant, or recreational attraction, intentionally absconds without paying for it.

(b) While a guest at any campground, hotel, motel, boarding or lodging house, or restaurant, intentionally defrauds the keeper thereof in any transaction arising out of the relationship as guest.

(c) Having obtained any transportation service from a taxicab operator, intentionally absconds without paying for the service.

(d) Having obtained gasoline or diesel fuel from a service station, garage, or other place where gasoline or diesel fuel is sold at retail or offered for sale at retail, intentionally absconds without paying for the gasoline or diesel fuel.

(2) Under this section, prima facie evidence of an intent to defraud is shown by:

(a) The refusal of payment upon presentation when due, and the return unpaid of any bank check or order for the payment of money, given by any guest to any campground, hotel, motel, boarding or lodging house, or restaurant, in payment of any obligation arising out of the relationship as guest. Those facts also constitute prima facie evidence of an intent to abscond without payment.

(b) The failure or refusal of any guest at a campground, hotel, motel, boarding or lodging house, or restaurant, to pay, upon written demand, the established charge for any beverage, food, lodging or other service or accommodation actually rendered.

(c) The giving of false information on a lodging registration form or the giving of false information or presenting of false or fictitious credentials for the purpose of obtaining any beverage or food, lodging or credit.

(d) The drawing, endorsing, issuing or delivering to any campground, hotel, motel, boarding or lodging house, or restaurant, of any check, draft or order for payment of money upon any bank or other depository, in payment of established charges for any beverage, food, lodging or other service or accommodation, knowing at the time that there is not sufficient credit with the drawee bank or other depository for payment in full of the instrument drawn.

(2g) If a person has obtained a ticket, another means of admission, or an accommodation or service provided by the recreational attraction, his or her failure or refusal to pay a recreational attraction the established charge for the ticket, other means of admission, or accommodation or service provided by the recreational attraction constitutes prima facie evidence of an intent to abscond without payment.

(2m) The refusal to pay a taxicab operator the established charge for transportation service provided by the operator constitutes prima facie evidence of an intent to abscond without payment.

(2r) The failure or refusal to pay a service station, garage, or other place where gasoline or diesel fuel is sold at retail or offered for sale at retail the established charge for gasoline or diesel fuel provided by the service station, garage, or other place constitutes prima facie evidence of an intent to abscond without payment.

(3) (am) Whoever violates sub. (1m) (a), (b), or (c):

1. Is guilty of a Class A misdemeanor when the value of any beverage, food, lodging, accommodation, transportation or other service is $2,500 or less.

2. Is guilty of a Class I felony when the value of any beverage, food, lodging, accommodation, transportation or other service exceeds $2,500.

(bm) Whoever violates sub. (1m) (d) is subject to a Class D forfeiture.

(3m) (a) *Definitions.* In this subsection:

1. "Operating privilege" has the meaning given in s. 340.01 (40).

2. "Repeat offense" means a violation of sub. (1m) (d) that occurs after a person has been found by a court to have violated sub. (1m) (d).

(b) *Driver's license suspension; 2nd offense.* Subject to pars. (c) and (d), if a person commits a repeat offense, the court, in addition to imposing any penalty under sub. (3) (bm), may suspend the person's operating privilege for not more than 6 months.

(c) *Driver's license suspension; 3rd offense.* Subject to par. (d), if a person violates sub. (1m) (d) after having been found by a court to have committed an offense that constitutes a repeat offense, the court, in addition to imposing any penalty under sub. (3) (bm), shall suspend the person's operating privilege for not more than 6 months.

(d) *Driver's license suspension; 4th offense.* If a person violates sub. (1m) (d) after having his or her operating privilege suspended under par. (c), the court, in addition to imposing any penalty under sub. (3) (bm), shall suspend the person's operating privilege for one year.

(4) (a) In addition to the other penalties provided for violation of this section, a judge may order a violator to pay restitution under s. 973.20. A victim may not be compensated under this section and s. 943.212.

(b) This subsection is applicable in actions concerning violations of ordinances in conformity with this section.

(5) A judgment may not be entered for a violation of this section or for a violation of an ordinance adopted in conformity with this section, regarding conduct that was the subject of a judgment including exemplary damages under s. 943.212.

History: 1977 c. 173; 1979 c. 239, 242; 1991 a. 39, 65, 189; 1995 a. 160; 2001 a. 16, 109; 2003 a. 80, 252, 327.

943.212 Fraud on hotel or restaurant keeper, recreational attraction, taxicab operator, or gas station; civil liability. (1) Any person who incurs injury to his or her business or property as a result of a violation of s. 943.21 may bring a civil action against any adult or emancipated minor who caused the loss for all of the following:

(a) The retail value of the beverage, food, lodging, accommodation, ticket or other means of admission, gasoline or diesel fuel, transportation, or service involved in the violation. A person may recover under this paragraph only if he or she exercises due diligence in demanding payment for the beverage, food, lodging, accommodation, ticket or other means of admission, gasoline or diesel fuel, transportation, or service.

(b) Any property damages not covered under par. (a).

(2) In addition to sub. (1), if the person who incurs the injury prevails, the judgment in the action may grant any of the following:

(a) Exemplary damages of not more than 3 times the amount under sub. (1) (a) and (b). No additional proof is required for an award of exemplary damages under this paragraph. Exemplary damages may not be granted for conduct that was the subject of a judgment for violation of s. 943.21 or an ordinance adopted in conformity with that section.

(b) 1. Notwithstanding the limitations of s. 814.04, reasonable attorney fees for actions commenced under ch. 801.

2. Attorney fees under s. 799.25 for actions commenced under ch. 799.

(3) Notwithstanding sub. (2), the total amount awarded for exemplary damages and attorney fees may not exceed $300.

(4) (a) At least 20 days prior to commencing an action, as specified in s. 801.02, under this section, the plaintiff shall notify the defendant, by mail, of his or her intent to bring the action and of the acts constituting the basis for the violation of s. 943.21. The plaintiff shall send the notice by regular mail supported by an affidavit of service of mailing or by a certificate of mailing obtained from the U.S. post office from which the mailing was made. The plaintiff shall mail the notice to the defendant's last−known address or to the address provided on the check or order. If the defendant pays the amount due for the beverage, food, lodging, accommodation, ticket or other means of admission, transportation, or service prior to the commencement of the action, he or she is not liable under this section.

(b) This subsection does not apply to an action based on acts that constitute a violation of s. 943.21 (1m) (d).

(5) The plaintiff has the burden of proving by a preponderance of the evidence that a violation occurred under s. 943.21. A conviction under s. 943.21 is not a condition precedent to bringing an action, obtaining a judgment or collecting that judgment under this section.

(6) A person is not criminally liable under s. 943.30 for any civil action brought in good faith under this section.

(7) Nothing in this section precludes a plaintiff from bringing the action under ch. 799 if the amount claimed is within the jurisdictional limits of s. 799.01 (1) (d).

History: 1991 a. 65; 1995 a. 160; 2003 a. 80, 252, 327; 2005 a. 253.

943.215 Absconding without paying rent. (1) Whoever having obtained the tenancy, as defined in s. 704.01 (4), of residential property he or she is entitled to occupy, intentionally absconds without paying all current and past rent due is guilty of a Class A misdemeanor.

(2) A person has a defense to prosecution under sub. (1) if he or she has provided the landlord with a security deposit that equals or exceeds the amount that the person owes the landlord regarding rent and damage to property.

(3) A person has a defense to prosecution under sub. (1) if, within 5 days after the day he or she vacates the rental premises, he or she pays all current and past rent due or provides to the landlord, in writing, a complete and accurate forwarding address.

(4) When the existence of a defense under sub. (2) or (3) has been placed in issue by the trial evidence, the state must prove beyond a reasonable doubt that the facts constituting the defense do not exist in order to sustain a finding of guilt under sub. (1).

(5) Subsection (1) does not apply to any tenant against whom a civil judgment has been entered for punitive damages because the tenant left the premises with unpaid rent.

History: 1989 a. 336.

943.22 Use of cheating tokens. Whoever obtains the property or services of another by depositing anything which he or she knows is not lawful money or an authorized token in any receptacle used for the deposit of coins or tokens is subject to a Class C forfeiture.

History: 1977 c. 173.

943.225 Refusal to pay for a motor bus ride. (1) In this section, "motor bus" has the meaning specified in s. 340.01 (31).

(2) Whoever intentionally enters a motor bus that transports persons for hire and refuses to pay, without delay, upon demand of the operator or other person in charge of the motor bus, the prescribed transportation fare is subject to a Class E forfeiture.

History: 1987 a. 171.

943.23 Operating vehicle without owner's consent. (1) In this section:

(a) "Drive" means the exercise of physical control over the speed and direction of a vehicle while it is in motion.

(b) "Major part of a vehicle" means any of the following:

1. The engine.

2. The transmission.

3. Each door allowing entrance to or egress from the passenger compartment.

4. The hood.

5. The grille.

6. Each bumper.

7. Each front fender.

8. The deck lid, tailgate or hatchback.

9. Each rear quarter panel.

10. The trunk floor pan.

11. The frame or, in the case of a unitized body, the supporting structure which serves as the frame.

12. Any part not listed under subds. 1. to 11. which has a value exceeding $500.

(c) "Operate" includes the physical manipulation or activation of any of the controls of a vehicle necessary to put it in motion.

(1g) Whoever, while possessing a dangerous weapon and by the use of, or the threat of the use of, force or the weapon against another, intentionally takes any vehicle without the consent of the owner is guilty of a Class C felony.

(2) Except as provided in sub. (3m), whoever intentionally takes and drives any vehicle without the consent of the owner is guilty of a Class H felony.

(3) Except as provided in sub. (3m), whoever intentionally drives or operates any vehicle without the consent of the owner is guilty of a Class I felony.

(3m) It is an affirmative defense to a prosecution for a violation of sub. (2) or (3) if the defendant abandoned the vehicle without damage within 24 hours after the vehicle was taken from the possession of the owner. An affirmative defense under this subsection mitigates the offense to a Class A misdemeanor. A defendant who raises this affirmative defense has the burden of proving the defense by a preponderance of the evidence.

(4m) Whoever knows that the owner does not consent to the driving or operation of a vehicle and intentionally accompanies, as a passenger in the vehicle, a person while he or she violates sub. (1g), (2), (3), or (3m) is guilty of a Class A misdemeanor.

(5) Whoever intentionally removes a major part of a vehicle without the consent of the owner is guilty of a Class I felony. Whoever intentionally removes any other part or component of a vehicle without the consent of the owner is guilty of a Class A misdemeanor.

(6) (a) In this subsection, "pecuniary loss" has the meaning described in s. 943.245 (1).

(b) In addition to the other penalties provided for violation of this section, a judge may require a violator to pay restitution to or on behalf of a victim regardless of whether the violator is placed on probation under s. 973.09. If restitution is ordered, the court shall consider the financial resources and future ability of the violator to pay and shall determine the method of payment. Upon the application of any interested party, the court may schedule and hold an evidentiary hearing to determine the value of the victim's pecuniary loss resulting from the offense.

History: 1977 c. 173; 1987 a. 349; 1989 a. 359; 1993 a. 92; 2001 a. 109.

To sustain a conviction for operating a car without the owner's consent, it is not necessary that the driver be the person who actually took the car. Edwards v. State, 46 Wis. 2d 249, 174 N.W.2d 269 (1970).

Leaving a vehicle because of the threat of imminent arrest is involuntary relinquishment, not abandonment under sub. (2). State v. Olson, 106 Wis. 2d 572, 317 N.W.2d 448 (1982).

Restitution under sub. (6) (b) is analyzed in the same manner as restitution under the general statute, s. 973.20. A defendant is entitled to a hearing, although it may be informal, to challenge the existence of damage to the victim, as well as the amount of damage. If damage results from a criminal episode in which the defendant played any part, the defendant is jointly and severally liable in restitution for the amount of damages. State v. Madlock, 230 Wis. 2d 324, 602 N.W.2d 104 (Ct. App. 1999), 98−2718.

Sub. (1r) is applicable if the taking of the vehicle is a substantial factor in the victim's death. A substantial factor is not only the primary or immediate cause, but includes other significant factors. State v. Miller, 231 Wis. 2d 447, 605 N.W.2d 567 (Ct. App. 1999), 98−2089.

Separate prosecutions for a carjacking in violation of sub. (1g), which occurred on one day, and operating the same car without the owner's consent in violation of sub. (3), which occurred on the next day, did not violate s. 939.66 (2r) or the constitutional protection against double jeopardy. State v. McKinnie, 2002 WI App 82, 252 Wis. 2d 172, 642 N.W.2d 617, 01−2764.

943.24 Issue of worthless check. (1) Whoever issues any check or other order for the payment of not more than $2,500 which, at the time of issuance, he or she intends shall not be paid is guilty of a Class A misdemeanor.

(2) Whoever issues any single check or other order for the payment of more than $2,500 or whoever within a 90−day period issues more than one check or other order amounting in the aggregate to more than $2,500 which, at the time of issuance, the person intends shall not be paid is guilty of a Class I felony.

(3) Any of the following is prima facie evidence that the person at the time he or she issued the check or other order for the payment of money, intended it should not be paid:

(a) Proof that, at the time of issuance, the person did not have an account with the drawee; or

(b) Proof that, at the time of issuance, the person did not have sufficient funds or credit with the drawee and that the person failed within 5 days after receiving written notice of nonpayment or dishonor to pay the check or other order, delivered by regular mail to either the person's last−known address or the address provided on the check or other order; or

(c) Proof that, when presentment was made within a reasonable time, the person did not have sufficient funds or credit with the drawee and the person failed within 5 days after receiving written notice of nonpayment or dishonor to pay the check or other order, delivered by regular mail to either the person's last−known address or the address provided on the check or other order.

(4) This section does not apply to a postdated check or to a check given for a past consideration, except a payroll check.

(5) (a) In addition to the other penalties provided for violation of this section, a judge may order a violator to pay restitution under s. 973.20.

(b) In actions concerning violations of ordinances in conformity with this section, a judge may order a violator to make restitution under s. 800.093.

(c) If the court orders restitution under pars. (a) and (b), any amount of restitution paid to the victim under one of those paragraphs reduces the amount the violator must pay in restitution to that victim under the other paragraph.

(6) (a) If the department of justice, a district attorney, or a state or local law enforcement agency requests any of the following information under par. (b) from a financial institution, as defined in s. 705.01 (3), regarding a specific person, the financial institution shall provide the information within 10 days after receiving the request:

1. Documents relating to the opening and closing of the person's account.

2. Notices regarding any of the following that were issued within the 6 months immediately before the request and that relate to the person:

a. Checks written by the person when there were insufficient funds in his or her account.

b. Overdrafts.

c. The dishonor of any check drawn on the person's account.

3. Account statements sent to the person by the financial institution for the following:

a. The period during which any specific check covered by a notice under subd. 2. was issued.

b. The period immediately before and immediately after the period specified in subd. 3. a.

4. The last known address and telephone number for the person's home and business.

(b) The department of justice, a district attorney, or a state or local law enforcement agency may request information under par. (a) only if the request is in writing and if it states that the requester is investigating whether the person specified violated this section or is prosecuting the person specified under this section.

(c) A financial institution may not impose a fee for providing information under this subsection.

History: 1977 c. 173; 1985 a. 179; 1987 a. 398; 1991 a. 39, 40; 1993 a. 71; 2001 a. 16, 109; 2003 a. 138, 306; 2005 a. 462.

The grace period under sub. (3) does not transform the issuance of a worthless check into a debt for which one may not be imprisoned under Art. I, s. 16. Locklear v. State, 86 Wis. 2d 603, 273 N.W.2d 334 (1979).

Checks cashed at a dog track for the purpose of making bets were void gambling contracts under s. 895.055 and could not be enforced under this statute although returned for nonsufficient funds. State v. Gonelly, 173 Wis. 2d 503, 496 N.W.2d 671 (Ct. App. 1992).

The distinction between present and past consideration under sub. (4) is discussed. State v. Archambeau, 187 Wis. 2d 501, 523 N.W.2d 150 (Ct. App. 1994).

Each different group of checks totalling more than $1,000, issued during the 15 day period, may be the basis for a separate charge under sub. (2). State v. Hubbard, 206 Wis. 2d 651, 558 N.W.2d 126 (Ct. App. 1996), 96−0865.

943.245 Worthless checks; civil liability. (1) In this section, "pecuniary loss" means:

(a) All special damages, but not general damages, including, without limitation because of enumeration, the money equivalent of loss resulting from property taken, destroyed, broken or otherwise harmed and out−of−pocket losses, such as medical expenses; and

(b) Reasonable out−of−pocket expenses incurred by the victim resulting from the filing of charges or cooperating in the investigation and prosecution of the offense under s. 943.24.

(1m) Except as provided in sub. (9), any person who incurs pecuniary loss, including any holder in due course of a check or order, may bring a civil action against any adult or emancipated minor who:

(a) Issued a check or order in violation of s. 943.24 or sub. (6); and

(b) Knew, should have known or recklessly disregarded the fact that the check or order was drawn on an account that did not exist, was drawn on an account with insufficient funds or was otherwise worthless.

(2) If the person who incurs the loss prevails, the judgment in the action shall grant monetary relief for all of the following:

(a) The face value of whatever checks or orders were involved.

(b) Any actual damages not covered under par. (a).

(c) 1. Exemplary damages of not more than 3 times the amount under pars. (a) and (b).

2. No additional proof is required for an award of exemplary damages under this paragraph.

(d) Notwithstanding the limitations of s. 799.25 or 814.04, all actual costs of the action, including reasonable attorney fees.

(3) Notwithstanding sub. (2) (c) and (d), the total amount awarded for exemplary damages and reasonable attorney fees may not exceed $500 for each violation.

(3m) Any recovery under this section shall be reduced by the amount recovered as restitution for the same act under ss. 800.093 and 973.20 or as recompense under s. 969.13 (5) (a) for the same act and by any amount collected in connection with the act and paid to the plaintiff under a deferred prosecution agreement under s. 971.41.

(4) At least 20 days prior to commencing an action, as specified in s. 801.02, under this section, the plaintiff shall notify the defendant, by mail, of his or her intent to bring the action. Notice of nonpayment or dishonor shall be sent by the payee or holder of the check or order to the drawer by regular mail supported by an affidavit of service of mailing. The plaintiff shall mail the notice to the defendant's last−known address or to the address provided on the check or order. If the defendant pays the check or order prior to the commencement of the action, he or she is not liable under this section.

(5) The plaintiff has the burden of proving by a preponderance of the evidence that a violation occurred under s. 943.24 or that he or she incurred a pecuniary loss as a result of the circumstances described in sub. (6). A conviction under s. 943.24 is not a condition precedent to bringing an action, obtaining a judgment or collecting that judgment under this section.

(6) (a) In this subsection, "past consideration" does not include work performed, for which a person is entitled to a payroll check.

(b) Whoever issues any check or other order for the payment of money given for a past consideration which, at the time of issuance, the person intends shall not be paid is liable under this section.

(7) A person is not criminally liable under s. 943.30 for any civil action brought in good faith under this section.

(8) Nothing in this section other than sub. (9) precludes a plaintiff from bringing the action under ch. 799 if the amount claimed is within the jurisdictional limits of s. 799.01 (1) (d).

(9) A person may not bring an action under this section after requesting that a criminal prosecution be deferred under s. 971.41 if the person against whom the action would be brought has complied with the terms of the deferred prosecution agreement.

History: 1985 a. 179; 1987 a. 398; 1989 a. 31; 1993 a. 71; 2003 a. 138; 2005 a. 447, 462; 2007 a. 96.

943.26 Removing or damaging encumbered real property. (1) Any mortgagor of real property or vendee under a land contract who, without the consent of the mortgagee or vendor, intentionally removes or damages the real property so as to substantially impair the mortgagee's or vendor's security is guilty of a Class A misdemeanor.

(2) If the security is impaired by more than $1,000, the mortgagor or vendee is guilty of a Class I felony.

History: 1977 c. 173; 2001 a. 109.

943.27 Possession of records of certain usurious loans. Any person who knowingly possesses any writing representing or constituting a record of a charge of, contract for, receipt of or demand for a rate of interest or consideration exceeding $20 upon $100 for one year computed upon the declining principal balance of the loan, use or forbearance of money, goods or things in action or upon the loan, use or sale of credit is, if the rate is prohibited by a law other than this section, guilty of a Class I felony.

History: 1977 c. 173; 1979 c. 168; 2001 a. 109.

943.28 Loan sharking prohibited. (1) For the purposes of this section:

(a) To collect an extension of credit means to induce in any way any person to make repayment thereof.

(b) An extortionate extension of credit is any extension of credit with respect to which it is the understanding of the creditor and the debtor at the time it is made that delay in making repayment or failure to make repayment could result in the use of violence or other criminal means to cause harm to the person, reputation or property of any person.

(c) An extortionate means is any means which involves the use, or an express or implicit threat of use, of violence or other criminal means to cause harm to the person, reputation or property of any person.

(2) Whoever makes any extortionate extension of credit, or conspires to do so, if one or more of the parties to the conspiracy does an act to effect its object, is guilty of a Class F felony.

(3) Whoever advances money or property, whether as a gift, as a loan, as an investment, pursuant to a partnership or profit−sharing agreement, or otherwise, for the purpose of making extortionate extensions of credit, is guilty of a Class F felony.

(4) Whoever knowingly participates in any way in the use of any extortionate means to collect or attempt to collect any extension of credit, or to punish any person for the nonrepayment thereof, is guilty of a Class F felony.

History: 1977 c. 173; 1995 a. 225; 2001 a. 109.

An extortionate extension of credit under sub. (1) (b) is not restricted to the original extension of credit, but includes renewals of loans. State v. Green, 208 Wis. 2d 290, 560 N.W.2d 295 (Ct. App. 1997), 96−0652.

943.30 Threats to injure or accuse of crime. (1) Whoever, either verbally or by any written or printed communication, maliciously threatens to accuse or accuses another of any crime or offense, or threatens or commits any injury to the person, property, business, profession, calling or trade, or the profits and income of any business, profession, calling or trade of another, with intent thereby to extort money or any pecuniary advantage whatever, or with intent to compel the person so threatened to do any act against the person's will or omit to do any lawful act, is guilty of a Class H felony.

(2) Whoever violates sub. (1) by obstructing, delaying or affecting commerce or business or the movement of any article or commodity in commerce or business is guilty of a Class H felony.

(3) Whoever violates sub. (1) by attempting to influence any petit or grand juror, in the performance of his or her functions as such, is guilty of a Class H felony.

(4) Whoever violates sub. (1) by attempting to influence the official action of any public officer is guilty of a Class H felony.

(5) (a) In this subsection, "patient health care records" has the meaning given in s. 146.81 (4).

(b) Whoever, orally or by any written or printed communication, maliciously uses, or threatens to use, the patient health care records of another person, with intent thereby to extort money or any pecuniary advantage, or with intent to compel the person so threatened to do any act against the person's will or omit to do any lawful act, is guilty of a Class H felony.

History: 1977 c. 173; 1979 c. 110; 1981 c. 118; 1997 a. 231; 2001 a. 109.

Commencement of a threat need not occur in Wisconsin to support an extortion charge venued in Wisconsin. State v. Kelly, 148 Wis. 2d 774, 436 N.W.2d 883 (Ct. App. 1989).

A threat to falsely testify unless paid, in violation of criminal law, is a threat to property within the purview of sub. (1). State v. Manthey, 169 Wis. 2d 673, 487 N.W.2d 44 (Ct. App. 1992).

Extortion is not a lesser included offense of robbery. Convictions for both is not precluded. State v. Dauer, 174 Wis. 2d 418, 497 N.W.2d 766 (Ct. App. 1993).

A threat to one's education constitutes a threat to one's profession under sub. (1), and a threat to terminate promised financial support could constitute a threat to property. State v. Kittilstad, 231 Wis. 2d 245, 603 N.W.2d 732 (1999), 98−1456.

A claim under this section is governed by the 6−year limitation period under s. 893.93 (1) (a). Elbe v. Wausau Hosp. Center, 606 F. Supp. 1491 (1985).

943.31 Threats to communicate derogatory information. Whoever threatens to communicate to anyone information, whether true or false, which would injure the reputation of the threatened person or another unless the threatened person transfers property to a person known not to be entitled to it is guilty of a Class I felony.

History: 1977 c. 173; 2001 a. 109.

A threat to injure a manager's reputation unless a job is offered violated this section. State v. Gilkes, 118 Wis. 2d 149, 345 N.W.2d 531 (Ct. App. 1984).

943.32 Robbery. (1) Whoever, with intent to steal, takes property from the person or presence of the owner by either of the following means is guilty of a Class E felony:

(a) By using force against the person of the owner with intent thereby to overcome his or her physical resistance or physical power of resistance to the taking or carrying away of the property; or

(b) By threatening the imminent use of force against the person of the owner or of another who is present with intent thereby to compel the owner to acquiesce in the taking or carrying away of the property.

(2) Whoever violates sub. (1) by use or threat of use of a dangerous weapon, a device or container described under s. 941.26 (4) (a) or any article used or fashioned in a manner to lead the victim reasonably to believe that it is a dangerous weapon or such a device or container is guilty of a Class C felony.

(3) In this section "owner" means a person in possession of property whether the person's possession is lawful or unlawful.

History: 1977 c. 173; 1979 c. 114; 1993 a. 486; 1995 a. 288; 2001 a. 109.

While a person who by use of force or a gun seeks to repossess specific property that he or she owns and has a present right of possession to might not have the intention to steal, the taking of money from a debtor by force to pay a debt is robbery unless the accused can trace that ownership to the specific coins and bills in the debtor's possession. Edwards v. State, 49 Wis. 2d 105, 181 N.W.2d 383 (1970).

Since attempted robbery requires proof of elements in addition to those required to prove burglary, they are separate and distinct crimes. State v. DiMaggio, 49 Wis. 2d 565, 182 N.W.2d 466 (1971).

It is error not to instruct on the allegations that the defendant was armed and that he attempted to conceal his identity, but it is harmless error when the facts are uncontroverted. Claybrooks v. State, 50 Wis. 2d 79, 183 N.W.2d 139 (1971).

On a charge of armed robbery, the court should instruct as to the definition of a dangerous weapon, but the error is harmless if all the evidence is to the effect that the defendant had a gun. Claybrooks v. State, 50 Wis. 2d 87, 183 N.W.2d 143 (1971).

If the evidence is clear that the defendant was armed, the court need not submit a verdict of unarmed robbery. Kimmons v. State, 51 Wis. 2d 266, 186 N.W.2d 308 (1971).

An information charging armed robbery is void if it fails to allege the use of or threat of force to overcome the owner's resistance. Champlain v. State, 53 Wis. 2d 751, 193 N.W.2d 868 (1972).

Theft is a lesser included offense of robbery. Both require asportation. Moore v. State, 55 Wis. 2d 1, 197 N.W.2d 820 (1972).

Taking a pouch from the victim by force and in such a manner as to overcome any physical resistance or power of resistance constituted robbery and not theft under s. 943.20. Walton v. State, 64 Wis. 2d 36, 218 N.W.2d 309 (1974).

When a victim testified that the defendant's accomplice held an object to his throat while the defendant took money from his person and the defendant testified that no robbery whatsoever occurred, the jury was presented with no evidence indicating that a robbery absent the threat of force had occurred. It was not error to deny the defendant's request for an instruction on theft from a person. State v. Powers, 66 Wis. 2d 84, 224 N.W.2d 206 (1974).

When a defendant lost money to a dice cheat and thereafter recovered a similar amount at gunpoint, the jury could convict despite the defendant's claim that the bills recovered were those lost. Austin v. State, 86 Wis. 2d 213, 271 N.W.2d 668 (1978).

Sub. (1) states one offense that may be committed by alternate means. The jury was properly instructed in the disjunctive on the force element. Manson v. State, 101 Wis. 2d 413, 304 N.W.2d 729 (1981).

Armed robbery can be the natural and probable consequence of robbery. In such case, an aider and abettor need not have had actual knowledge that the principals would be armed. State v. Ivey, 119 Wis. 2d 591, 350 N.W.2d 622 (1984).

If the defendant commits a robbery while merely possessing a dangerous weapon, the penalty enhancer under s. 939.63 is applicable. State v. Robinson, 140 Wis. 2d 673, 412 N.W.2d 535 (Ct. App. 1987).

A defendant's lack of intent to make a victim believe that the defendant is armed is irrelevant in finding a violation of sub. (2); if the victim's belief that the defendant was armed is reasonable, that is enough. State v. Hubanks, 173 Wis. 2d 1, 496 N.W.2d 96 (Ct. App. 1992).

Extortion is not a lesser included offense of robbery. Convictions for both are not precluded. State v. Dauer, 174 Wis. 2d 418, 497 N.W.2d 766 (Ct. App. 1993).

This statute does not require a specific intent that property that is demanded actually be transferred. State v. Voss, 205 Wis. 2d 586, 556 N.W.2d 433 (Ct. App. 1996), 95−1183.

Asportation, or carrying away, is an element of robbery. The asportation requirement provides a bright line distinction between attempt and robbery. There is no exception for an automobile that is entered by force, but cannot be moved by the defendant. State v. Johnson, 207 Wis. 2d 239, 558 N.W.2d 375 (1997), 95−0072.

The key to a conviction under sub. (2) is whether the victim reasonably believed that he or she was threatened with a dangerous weapon even though he or she did not see anything that was perceived as a weapon. In applying reasonable belief to the armed−robbery statute courts must consider the circumstances of the individual case. State v. Rittman, 2010 WI App 41, 324 Wis. 2d 273, 781 N.W.2d 545, 09−0708.

The state's attempt to retry the defendant for armed robbery, alleging the use of a different weapon after the trial judge concluded that acquittal on a first armed robbery charge resulted from insufficient evidence of the use of a gun, violated double jeopardy protections. It did not necessarily follow that the state was prevented from pursuing a charge of simple robbery however. Losey v. Frank, 268 F. Supp. 2d 1066 (2003).

Letting Armed Robbery Get Away: An Analysis of Wisconsin's Armed Robbery Statute. Goodstein. 1998 WLR 591.

943.34 Receiving stolen property. (1) Except as provided under s. 948.62, whoever intentionally receives or conceals stolen property is guilty of:

(a) A Class A misdemeanor, if the value of the property does not exceed $2,500.

(bf) A Class I felony, if the value of the property exceeds $2,500 but does not exceed $5,000.

(bm) A Class H felony, if the value of the property exceeds $5,000 but does not exceed $10,000.

(c) A Class G felony, if the value of the property exceeds $10,000.

(2) In any action or proceeding for a violation of sub. (1), a party may use duly identified and authenticated photographs of property which was the subject of the violation in lieu of producing the property.

History: 1977 c. 173; 1987 a. 266, 332; 1991 a. 39; 2001 a. 16, 109.

The fact that sequentially received stolen property was purchased for a lump sum is an insufficient basis to aggregate the value of the property; the crime of receiving stolen property does not require payment. State v. Spraggin, 71 Wis. 2d 604, 239 N.W.2d 297 (1976).

If any element of the crime charged occurred in a given county, then that county can be the place of trial. Because the crime of receiving stolen property requires more than two acts, and one of the acts is that the property must be stolen, venue is properly established in the county where that act occurred. State v. Lippold, 2008 WI App 130, 313 Wis. 2d 699, 757 N.W.2d 825, 07−1773.

943.37 Alteration of property identification marks. Whoever does any of the following with intent to prevent the identification of the property involved is guilty of a Class A misdemeanor:

(1) Alters or removes any identification mark on any log or other lumber without the consent of the owner; or

(2) Alters or removes any identification mark from any receptacle used by the manufacturer of any beverage; or

(3) Alters or removes any manufacturer's identification number on personal property or possesses any personal property with knowledge that the manufacturer's identification number has been removed or altered. Possession of 2 or more similar items of personal property with the manufacturer's identification number altered or removed is prima facie evidence of knowledge of the alteration or removal and of an intent to prevent identification of the property.

(4) Alters or removes livestock brands, recorded under s. 95.11, from any animal without the owner's consent, or possesses any livestock with knowledge that the brand has been altered or removed without the owner's knowledge or consent.

History: 1973 c. 239; 1977 c. 173.

"Similar" under sub. (3) means comparable or substantially alike. State v. Hamilton, 146 Wis. 2d 426, 432 N.W.2d 108 (Ct. App. 1988).

943.38 Forgery. (1) Whoever with intent to defraud falsely makes or alters a writing or object of any of the following kinds so that it purports to have been made by another, or at another time, or with different provisions, or by authority of one who did not give such authority, is guilty of a Class H felony:

(a) A writing or object whereby legal rights or obligations are created, terminated or transferred, or any writing commonly relied upon in business or commercial transactions as evidence of debt or property rights; or

(b) A public record or a certified or authenticated copy thereof; or

(c) An official authentication or certification of a copy of a public record; or

(d) An official return or certificate entitled to be received as evidence of its contents.

(2) Whoever utters as genuine or possesses with intent to utter as false or as genuine any forged writing or object mentioned in sub. (1), knowing it to have been thus falsely made or altered, is guilty of a Class H felony.

(3) Whoever, with intent to defraud, does any of the following is guilty of a Class A misdemeanor:

(a) Falsely makes or alters any object so that it appears to have value because of antiquity, rarity, source or authorship which it does not possess; or possesses any such object knowing it to have been thus falsely made or altered and with intent to transfer it as original and genuine, by sale or for security purposes; or

(b) Falsely makes or alters any writing of a kind commonly relied upon for the purpose of identification or recommendation; or

(c) Without consent, places upon any merchandise an identifying label or stamp which is or purports to be that of another craftsman, tradesman, packer or manufacturer; or

(d) Falsely makes or alters a membership card purporting to be that of a fraternal, business or professional association or of a labor union; or possesses any such card knowing it to have been thus falsely made or altered and with intent to use it or cause or permit its use to deceive another; or

(e) Falsely makes or alters any writing purporting to evidence a right to transportation on any common carrier; or

(f) Falsely makes or alters a certified abstract of title to real estate, a title insurance commitment, a title insurance policy, or any other written evidence regarding the state of title to real estate.

History: 1977 c. 173; 2001 a. 109; 2005 a. 205.

Acceptance of or cashing a forged check is not an element of uttering under sub. (2). Little v. State, 85 Wis. 2d 558, 271 N.W.2d 105 (1978).

Fraudulent use of a credit card need not involve forgery. If forgery is involved, the prosecutor has discretion to charge under s. 943.41 or 943.38. Mack v. State, 93 Wis. 2d 287, 286 N.W.2d 563 (1980).

Signed receipts for bogus magazine subscriptions constituted forgery even though the defrauded subscriber did not specifically rely on the receipt. State v. Davis, 105 Wis. 2d 690, 314 N.W.2d 907 (Ct. App. 1981).

The absence of a maker's signature did not immunize the accused from the crime of uttering a forged writing. State v. Machon, 112 Wis. 2d 47, 331 N.W.2d 665 (Ct. App. 1983).

Depositing a forged instrument into an automated teller machine constitutes "uttering" under sub. (2). State v. Tolliver, 149 Wis. 2d 166, 440 N.W.2d 571 (Ct. App. 1989).

Whether a writing is a negotiable instrument and whether the conduct of the victims when presented with the writing was negligent is irrelevant to whether the writings were within the terms of sub. (1) (a). State v. Perry, 215 Wis. 2d 696, 573 N.W.2d 876 (Ct. App. 1997), 97−0847.

Sub. (2) does not incorporate the requirement of sub. (1) that the offender act with intent to defraud. State v. Shea, 221 Wis. 2d 418, 585 N.W.2d 662 (Ct. App. 1998), 97−2345.

A check maker's intent or reliance on an endorsement are immaterial to the crime of forgery by the endorser. The essence of forgery is the intent to defraud. The use of an assumed name may be a forgery if done for a fraudulent purpose. State v. Czarnecki, 2000 WI App 155, 237 Wis. 2d 794, 615 N.W.2d 672, 99−1985.

A person cannot falsely make a postal money order by writing in the name of someone else as the payer as that does not affect the genuineness of the money order itself. It is not forgery to add mere surplusage to a document. State v. Entringer, 2001 WI App 157, 246 Wis. 2d 839, 631 N.W.2d 651, 00−2568.

The words "legal rights" in sub. (1) (a) plainly cover the right to dispense prescription drugs without violating the law. That the legislature has created specific crimes that cover obtaining a controlled substance by forgery under s. 961.43 (1) (a) and (2) and obtaining a prescription drug by forgery under s. 450.11 (7) and (9) (a) does not mean that each violation is not punishable under this section, the general forgery statute. The fact that the forgery statute applies to writings creating property rights does not mean that it applies only to such writings. State v. Fortun, 2010 WI App 32, 323 Wis. 2d 732, 780 N.W.2d 238, 09−1172.

943.39 Fraudulent writings. Whoever, with intent to injure or defraud, does any of the following is guilty of a Class H felony:

(1) Being a director, officer, manager, agent or employee of any corporation or limited liability company falsifies any record, account or other document belonging to that corporation or limited liability company by alteration, false entry or omission, or makes, circulates or publishes any written statement regarding the corporation or limited liability company which he or she knows is false; or

(2) By means of deceit obtains a signature to a writing which is the subject of forgery under s. 943.38 (1); or

(3) Makes a false written statement with knowledge that it is false and with intent that it shall ultimately appear to have been signed under oath.

History: 1977 c. 173; 1993 a. 112; 2001 a. 109.

Sub. (2) does not require proof of forgery. State v. Weister, 125 Wis. 2d 54, 370 N.W.2d 278 (Ct. App. 1985).

943.392 Fraudulent data alteration. Whoever, with intent to injure or defraud, manipulates or changes any data, as defined in s. 943.70 (1) (f), is guilty of a Class A misdemeanor.

History: 1993 a. 496.

21st Century White Collar Crime: Intellectual Property Crimes in the Cyber World. Simon & Jones. Wis. Law. Oct. 2004.

943.395 Fraudulent insurance and employee benefit program claims. (1) Whoever, knowing it to be false or fraudulent, does any of the following may be penalized as provided in sub. (2):

(a) Presents or causes to be presented a false or fraudulent claim, or any proof in support of such claim, to be paid under any contract or certificate of insurance; or

(b) Prepares, makes or subscribes to a false or fraudulent account, certificate, affidavit, proof of loss or other document or writing, with knowledge that the same may be presented or used in support of a claim for payment under a policy of insurance.

(c) Presents or causes to be presented a false or fraudulent claim or benefit application, or any false or fraudulent proof in support of such a claim or benefit application, or false or fraudulent information which would affect a future claim or benefit application, to be paid under any employee benefit program created by ch. 40.

(d) Makes any misrepresentation in or with reference to any application for membership or documentary or other proof for the purpose of obtaining membership in or noninsurance benefit from any fraternal subject to chs. 600 to 646, for himself or herself or any other person.

(2) Whoever violates this section:

(a) Is guilty of a Class A misdemeanor if the value of the claim or benefit does not exceed $2,500.

(b) Is guilty of a Class I felony if the value of the claim or benefit exceeds $2,500.

History: 1971 c. 214; 1975 c. 373, 421; 1977 c. 173; 1979 c. 89; 1981 c. 96; 1987 a. 349; 1991 a. 39; 2001 a. 16, 109.

The "value of the claim" under sub. (2) refers to the amount of the entire claim and not the fraudulent portion. State v. Briggs, 214 Wis. 2d 281, 571 N.W.2d 881 (Ct. App. 1997), 97−0439.

943.40 Fraudulent destruction of certain writings. Whoever with intent to defraud does either of the following is guilty of a Class H felony:

(1) Destroys or mutilates any corporate books of account or records; or

(2) Completely erases, obliterates or destroys any writing which is the subject of forgery under s. 943.38 (1) (a).

History: 1977 c. 173; 2001 a. 109.

943.41 Financial transaction card crimes. (1) DEFINITIONS. In this section:

(a) "Alter" means add information to, change information on or delete information from.

(am) "Automated financial service facility" means a machine activated by a financial transaction card, personal identification code or both.

(b) "Cardholder" means the person to whom or for whose benefit a financial transaction card is issued.

(c) "Counterfeit" means to manufacture, produce or create by any means a financial transaction card or purported financial transaction card without the issuer's consent or authorization.

(e) "Expired financial transaction card" means a financial transaction card which is no longer valid because the term shown thereon has elapsed.

(em) "Financial transaction card" means an instrument or device issued by an issuer for the use of the cardholder in any of the following:

1. Obtaining anything on credit.

2. Certifying or guaranteeing the availability of funds sufficient to honor a draft or check.

3. Gaining access to an account.

(f) "Issuer" means the business organization or financial institution which issues a financial transaction card or its duly authorized agent.

(fm) "Personal identification code" means a numeric, alphabetic or alphanumeric code or other means of identification

required by an issuer to permit a cardholder's authorized use of a financial transaction card.

(g) "Receives" or "receiving" means acquiring possession or control or accepting as security for a loan.

(h) "Revoked financial transaction card" means a financial transaction card which is no longer valid because permission to use it has been suspended or terminated by the issuer.

(2) FALSE STATEMENTS. No person shall make or cause to be made, whether directly or indirectly, any false statements in writing, knowing it to be false and with intent that it be relied upon, respecting the person's identity or that of any other person or the person's financial condition or that of any other person or other entity for the purpose of procuring the issuance of a financial transaction card.

(3) THEFT BY TAKING CARD. (a) No person shall acquire a financial transaction card from the person, possession, custody or control of another without the cardholder's consent or, with knowledge that it has been so acquired, receive the financial transaction card with intent to use it or sell it or to transfer it to a person other than the issuer. Acquiring a financial transaction card without consent includes obtaining it by conduct defined as statutory theft. If a person has in his or her possession or under his or her control financial transaction cards issued in the names of 2 or more other persons it is prima facie evidence that the person acquired them in violation of this subsection.

(b) No person shall receive a financial transaction card that the person knows to have been lost, mislaid, or delivered under a mistake as to the identity or address of the cardholder, and retain possession thereof with intent to sell it, or to transfer it to a person other than the issuer or the cardholder, or to use it. The possession of such a financial transaction card for more than 7 days by a person other than the issuer or the cardholder is prima facie evidence that such person intended to sell, transfer or use it in violation of this subsection.

(c) No person other than the issuer shall sell a financial transaction card. No person shall buy a financial transaction card from a person other than the issuer.

(d) No person shall, with intent to defraud the issuer, a person or organization providing money, goods, services or anything else of value, or any other person, obtain control over a financial transaction card as security for debt.

(e) No person other than the issuer may receive a financial transaction card issued in the name of another person which he or she has reason to know was taken or retained in violation of this subsection or sub. (2). Either of the following is prima facie evidence of a violation of this paragraph:

1. Possession of 3 or more financial transaction cards with reason to know that the financial transaction cards were taken or retained in violation of this subsection or sub. (2).

2. Possession of a financial transaction card with knowledge that the financial transaction card was taken or retained in violation of this subsection or sub. (2).

(4) FORGERY OF FINANCIAL TRANSACTION CARD. (a) No person shall, with intent to defraud a purported issuer, a person or organization providing money, goods, services or anything else of value or any other person, alter or counterfeit a financial transaction card or purported financial transaction card or possess a financial transaction card or purported financial transaction card with knowledge that it has been altered or counterfeited. The possession by a person other than the purported issuer of 2 or more financial transaction cards which have been altered or counterfeited is prima facie evidence that the person intended to defraud or that the person knew the financial transaction cards to have been so altered or counterfeited.

(b) No person other than the cardholder or a person authorized by the cardholder shall, with intent to defraud the issuer, a person or organization providing money, goods, services or anything else of value or any other person, sign a financial transaction card. Possession by a person other than the intended cardholder or one authorized by the intended cardholder of a financial transaction card signed by such person is prima facie evidence that such person intended to defraud in violation of this subsection.

(5) FRAUDULENT USE. (a) 1. No person shall, with intent to defraud the issuer, a person or organization providing money, goods, services or anything else of value or any other person:

a. Use, for the purpose of obtaining money, goods, services or anything else of value, a financial transaction card obtained or retained in violation of sub. (3) or a financial transaction card which the person knows is forged, expired or revoked; or

b. Obtain money, goods, services or anything else of value by representing without the consent of the cardholder that the person is the holder of a specified card or by representing that the person is the holder of a card and such card has not in fact been issued.

2. Knowledge of revocation shall be presumed to have been received by a cardholder 4 days after it has been mailed to the cardholder at the address set forth on the financial transaction card or at the cardholder's last−known address by registered or certified mail, return receipt requested, and if the address is more than 500 miles from the place of mailing, by air mail. If the address is located outside the United States, Puerto Rico, the Virgin Islands, the Canal Zone and Canada, notice shall be presumed to have been received 10 days after mailing by registered or certified mail.

(b) No cardholder shall use a financial transaction card issued to the cardholder or allow another person to use a financial transaction card issued to the cardholder with intent to defraud the issuer, a person or organization providing money, goods, services or anything else of value or any other person.

(c) No person may deposit a stolen or forged instrument by means of an automated financial service facility with knowledge of the character of the instrument.

(d) No person may, with intent to defraud anyone:

1. Introduce information into an electronic funds transfer system.

2. Transmit information to or intercept or alter information from an automated financial service facility.

(e) No person may knowingly receive anything of value from a violation of par. (c) or (d).

(6) FRAUDULENT USE; OTHER PERSONS. (a) No person who is authorized by an issuer to furnish money, goods, services or anything else of value upon presentation of a financial transaction card by the cardholder, or any agent or employee of such person, shall, with intent to defraud the issuer or the cardholder, furnish money, goods, services or anything else of value upon presentation of a financial transaction card obtained or retained under circumstances prohibited by sub. (3) or a financial transaction card which the person knows is forged, expired or revoked.

(b) No person who is authorized by an issuer to furnish money, goods, services or anything else of value upon presentation of a financial transaction card by the cardholder, or any agent or employee of such person, shall, with intent to defraud, fail to furnish money, goods, services or anything else of value which the person represents in writing to the issuer that the person has furnished.

(c) No person other than the cardholder shall possess an incomplete financial transaction card with intent to complete it without the consent of the issuer. A financial transaction card is "incomplete" if part of the matter, other than the signature of the cardholder, which an issuer requires to appear on the financial transaction card before it can be used by a cardholder has not yet been stamped, embossed, imprinted or written on it.

(d) No person shall receive money, goods, services or anything else of value obtained under circumstances prohibited by this section, knowing or believing that it was so obtained. Any person who obtains at a discount price a ticket issued by an airline, railroad, steamship or other transportation company which was acquired under circumstances prohibited by this section without reasonable inquiry to ascertain that the person from whom it was obtained had a legal right to possess it shall be presumed to know

that such ticket was acquired under circumstances prohibited by this section.

(6m) FACTORING PROHIBITED. (a) Except as provided in par. (b), a person authorized to furnish money, goods, services or anything else of value upon presentation of a financial transaction card may not deposit, assign, endorse or present for payment to an issuer or to any other person authorized to acquire transaction records for presentation to an issuer a financial transaction card transaction record if the person did not furnish or agree to furnish the money, goods, services or anything else of value represented to be furnished by the transaction record.

(b) Paragraph (a) does not apply to any of the following:

1. A franchisor, as defined in s. 553.03 (6), who presents for payment a financial transaction card transaction record of a franchisee, as defined in s. 553.03 (5), if the franchisor is authorized to present the transaction record on behalf of the franchisee and the franchisee furnished or agreed to furnish the money, goods, services or anything else of value represented to be furnished by the transaction record.

2. A general merchandise retailer who presents for payment a financial transaction card transaction record of a person who furnishes money, goods, services or anything else of value on the business premises of the general merchandise retailer if the general merchandise retailer is authorized to present the transaction record on behalf of the person and the person furnished or agreed to furnish the money, goods, services or anything else of value represented to be furnished by the transaction record.

3. An issuer or an organization of issuers who present a financial transaction card transaction record for the interchange and settlement of the transaction.

(7) DEFENSES NOT AVAILABLE. In any prosecution for violation of this section, it is not a defense:

(a) That a person other than the defendant has not been convicted, apprehended or identified; or

(b) That some of the acts constituting the crime did not occur in this state or were not a crime or elements of a crime where they did occur.

(8) PENALTIES. (a) Any person violating any provision of sub. (2), (3) (a) to (d) or (4) (b) is guilty of a Class A misdemeanor.

(b) Any person violating any provision of sub. (3) (e), (4) (a), (6) (c) or (6m) is guilty of a Class I felony.

(c) Any person violating any provision of sub. (5) or (6) (a), (b), or (d), if the value of the money, goods, services, or property illegally obtained does not exceed $2,500 is guilty of a Class A misdemeanor; if the value of the money, goods, services, or property exceeds $2,500 but does not exceed $5,000, in a single transaction or in separate transactions within a period not exceeding 6 months, the person is guilty of a Class I felony; if the value of the money, goods, services, or property exceeds $5,000 but does not exceed $10,000, in a single transaction or in separate transactions within a period not exceeding 6 months, the person is guilty of a Class H felony; or if the value of money, goods, services, or property exceeds $10,000, in a single transaction or in separate transactions within a period not exceeding 6 months, the person is guilty of a Class G felony.

History: 1973 c. 219; 1977 c. 173; 1981 c. 288; 1989 a. 321; 1991 a. 39; 1993 a. 486; 1995 a. 225; 2001 a. 16, 109.

Fraudulent use of a credit card need not involve forgery. If forgery is involved, the prosecutor has discretion to charge under either this section or s. 943.38. Mack v. State, 93 Wis. 2d 287, 286 N.W.2d 563 (1980).

Actual possession of the financial transaction card is not required for a violation of sub. (5) (a) 1. a. State v. Shea, 221 Wis. 2d 418, 585 N.W.2d 662 (Ct. App. 1998), 97−2345.

943.45 Theft of telecommunications service. (1) No person may intentionally obtain or attempt to obtain telecommunications service, as defined in s. 196.01 (9m), by any of the following means:

(a) Charging such service to an existing telephone number or credit card number without the consent of the subscriber thereto or the legitimate holder thereof.

(b) Charging such service to a false, fictitious, suspended, terminated, expired, canceled or revoked telephone number or credit card number.

(c) Rearranging, tampering with or making connection with any facilities or equipment.

(d) Using a code, prearranged scheme, or other stratagem or device whereby said person in effect sends or receives information.

(e) Using any other contrivance, device or means to avoid payment of the lawful charges, in whole or in part, for such service.

(2) This section shall apply when the said telecommunications service either originates or terminates, or both, in this state, or when the charges for said telecommunications service would have been billable, in normal course, by a person providing telecommunications service in this state, but for the fact that said service was obtained, or attempted to be obtained, by one or more of the means set forth in sub. (1).

(3) The following penalties apply to violations of this section:

(a) Except as provided in pars. (b) to (d), any person who violates sub. (1) is subject to a Class C forfeiture.

(b) Except as provided in pars. (c) and (d), any person who violates sub. (1) as a 2nd or subsequent offense is guilty of a Class B misdemeanor.

(c) Except as provided in par. (d), any person who violates sub. (1) for direct or indirect commercial advantage or private financial gain is guilty of a Class A misdemeanor.

(d) Any person who violates sub. (1) for direct or indirect commercial advantage or private financial gain as a 2nd or subsequent offense is guilty of a Class I felony.

History: 1977 c. 173; 1991 a. 39; 1993 a. 496; 2001 a. 109.

Each separate plan or scheme to obtain service by fraud is a separate chargeable offense. State v. Davis, 171 Wis. 2d 711, 492 N.W.2d 174 (Ct. App. 1992).

943.455 Theft of commercial mobile service. (1) DEFINITIONS. In this section:

(a) "Commercial mobile service" means commercial mobile service, as defined in s. 196.01 (2i), that is provided by a company for payment.

(b) "Company" means a commercial mobile radio service provider, as defined in s. 196.01 (2g).

(2) PROHIBITIONS. No person may intentionally do any of the following:

(a) Obtain or attempt to obtain commercial mobile service from a company by trick, artifice, deception, use of an illegal device or other fraudulent means with the intent to deprive that company of any or all lawful compensation for rendering each type of service obtained. The intent required for a violation of this paragraph may be inferred from the presence on the property and in the actual possession of the defendant of a device not authorized by the company, the major purpose of which is to permit reception of commercial mobile services without payment. This inference is rebutted if the defendant demonstrates that he or she purchased that device for a legitimate use.

(b) Give technical assistance or instruction to any person in obtaining or attempting to obtain any commercial mobile service without payment of all lawful compensation to the company providing that service. This paragraph does not apply if the defendant demonstrates that the technical assistance or instruction was given for a legitimate purpose.

(c) Maintain an ability to connect, whether physical, electronic, by radio wave or by other means, with any facilities, components or other devices used for the transmission of commercial mobile services for the purpose of obtaining commercial mobile service without payment of all lawful compensation to the company providing that service. The intent required for a violation of this paragraph may be inferred from proof that the commercial mobile service to the defendant was authorized under a service agreement with the defendant and has been terminated by the

company and that thereafter there exists in fact an ability to connect to the company's commercial mobile service system.

(d) Make or maintain any modification or alteration to any device installed with the authorization of a company for the purpose of obtaining any service offered by that company which that person is not authorized by that company to obtain. The intent required for a violation of this paragraph may be inferred from proof that, as a matter of standard procedure, the company places written warning labels on its telecommunications devices explaining that tampering with the device is a violation of law and the device is found to have been tampered with, altered or modified so as to allow the reception of services offered by the company without authority to do so.

(e) Possess without authority any device designed to receive from a company any services offered for sale by that company, whether or not the services are encoded, filtered, scrambled or otherwise made unintelligible, or designed to perform or facilitate the performance of any of the acts under pars. (a) to (d) with the intent that that device be used to receive that company's services without payment. Intent to violate this paragraph for direct or indirect commercial advantage or private financial gain may be inferred from proof of the existence on the property and in the actual possession of the defendant of a device if the totality of circumstances, including quantities or volumes, indicates possession for resale.

(f) Manufacture, import into this state, distribute, publish, advertise, sell, lease or offer for sale or lease any device or any plan or kit for a device designed to receive commercial mobile services offered for sale by a company, whether or not the services are encoded, filtered, scrambled or otherwise made unintelligible, with the intent that that device, plan or kit be used for obtaining a company's services without payment. The intent required for a violation of this paragraph may be inferred from proof that the defendant has sold, leased or offered for sale or lease any device, plan or kit for a device in violation of this paragraph and during the course of the transaction for sale or lease the defendant expressly states or implies to the buyer that the product will enable the buyer to obtain commercial mobile service without charge.

(4) PENALTIES. The following penalties apply for violations of this section:

(a) Except as provided in pars. (b) to (d), any person who violates sub. (2) (a) to (f) is subject to a Class C forfeiture.

(b) Except as provided in pars. (c) and (d), any person who violates sub. (2) (a) to (f) as a 2nd or subsequent offense is guilty of a Class B misdemeanor.

(c) Except as provided in par. (d), any person who violates sub. (2) (a) to (f) for direct or indirect commercial advantage or private financial gain is guilty of a Class A misdemeanor.

(d) Any person who violates sub. (2) (a) to (f) for direct or indirect commercial advantage or private financial gain as a 2nd or subsequent offense is guilty of a Class I felony.

(5) EXCEPTION. This section does not affect the use by a person of commercial mobile services if the services have been paid for.

History: 1991 a. 39; 1993 a. 496; 1997 a. 218; 2001 a. 109.

943.46 Theft of video service. (1) DEFINITIONS. In this section:

(b) "Private financial gain" does not include the gain resulting to any individual from the private use in that individual's dwelling unit of any programming for which the individual has not obtained authorization.

(c) "Video service" has the meaning given in s. 66.0420 (2) (y), except that "video service" does not include signals received by privately owned antennas that are not connected to a video service network whether or not the same signals are provided by a video service provider.

(d) "Video service network" has the meaning given in s. 66.0420 (2) (zb).

(e) "Video service provider" has the meaning given in s. 66.0420 (2) (zg), and also includes an interim cable operator, as defined in s. 66.0420 (2) (n).

(2) PROHIBITIONS. No person may intentionally do any of the following:

(a) Obtain or attempt to obtain video service from a provider by trick, artifice, deception, use of an illegal device or illegal decoder or other fraudulent means with the intent to deprive that provider of any or all lawful compensation for rendering each type of service obtained. The intent required for a violation of this paragraph may be inferred from the presence on the property and in the actual possession of the defendant of a device not authorized by the video service provider, the major purpose of which is to permit reception of video services without payment. This inference is rebutted if the defendant demonstrates that he or she purchased that device for a legitimate use.

(b) Give technical assistance or instruction to any person in obtaining or attempting to obtain any video service without payment of all lawful compensation to the provider providing that service. This paragraph does not apply if the defendant demonstrates that the technical assistance or instruction was given or the installation of the connection, descrambler or receiving device was for a legitimate use.

(c) Make or maintain a connection, whether physical, electrical, mechanical, acoustical or by other means, with any cables, wires, components or other devices used for the distribution of video services for the purpose of distributing video service to any other dwelling unit without authority from a video service provider.

(d) Make or maintain a connection, whether physical, electrical, mechanical, acoustical or by other means, with any cables, wires, components or other devices used for the distribution of video services for the purpose of obtaining video service without payment of all lawful compensation to the provider providing that service. The intent required for a violation of this paragraph may be inferred from proof that the video service to the defendant's residence or business was connected under a service agreement with the defendant and has been disconnected by the video service provider and that thereafter there exists in fact a connection to the video service network at the defendant's residence or business.

(e) Make or maintain any modification or alteration to any device installed with the authorization of a video service provider for the purpose of intercepting or receiving any program or other service carried by that provider which that person is not authorized by that provider to receive. The intent required for a violation of this paragraph may be inferred from proof that, as a matter of standard procedure, the video service provider places written warning labels on its converters or decoders explaining that tampering with the device is a violation of law and the converter or decoder is found to have been tampered with, altered or modified so as to allow the reception or interception of programming carried by the video service provider without authority to do so. The trier of fact may also infer that a converter or decoder has been altered or modified from proof that the video service provider, as a matter of standard procedure, seals the converters or decoders with a label or mechanical device, that the seal was shown to the customer upon delivery of the decoder and that the seal has been removed or broken. The inferences under this paragraph are rebutted if the video service provider cannot demonstrate that the intact seal was shown to the customer.

(f) Possess without authority any device or printed circuit board designed to receive from a video service network any video programming or services offered for sale over that video service network, whether or not the programming or services are encoded, filtered, scrambled or otherwise made unintelligible, or perform or facilitate the performance of any of the acts under pars. (a) to (e) with the intent that that device or printed circuit be used to receive that video service provider's services without payment. Intent to violate this paragraph for direct or indirect commercial

advantage or private financial gain may be inferred from proof of the existence on the property and in the actual possession of the defendant of a device if the totality of circumstances, including quantities or volumes, indicates possession for resale.

(g) Manufacture, import into this state, distribute, publish, advertise, sell, lease or offer for sale or lease any device, printed circuit board or any plan or kit for a device or for a printed circuit designed to receive the video programming or services offered for sale over a video service network from a video service network, whether or not the programming or services are encoded, filtered, scrambled or otherwise made unintelligible, with the intent that that device, printed circuit, plan or kit be used for the reception of that provider's services without payment. The intent required for a violation of this paragraph may be inferred from proof that the defendant has sold, leased or offered for sale or lease any device, printed circuit board, plan or kit for a device or for a printed circuit board in violation of this paragraph and during the course of the transaction for sale or lease the defendant expressly states or implies to the buyer that the product will enable the buyer to obtain video service without charge.

(4) PENALTIES. The following penalties apply for violations of this section:

(a) Except as provided in pars. (b) to (d), any person who violates sub. (2) (a) to (f) is subject to a Class C forfeiture.

(b) Except as provided in pars. (c) and (d), any person who violates sub. (2) (a) to (f) as a 2nd or subsequent offense is guilty of a Class B misdemeanor.

(c) Except as provided in par. (d), any person who violates sub. (2) (a) to (g) for direct or indirect commercial advantage or private financial gain is guilty of a Class A misdemeanor.

(d) Any person who violates sub. (2) (a) to (g) for direct or indirect commercial advantage or private financial gain as a 2nd or subsequent offense is guilty of a Class I felony.

(5) EXCEPTION. This section does not affect the use by a person of video services if the services have been paid for and the use is exclusive to the person's dwelling unit. This subsection does not prohibit a board or council of any city, village or town from specifying the number and manner of installation of outlets used by any such person for video services and does not prohibit a c video service provider, in any written contract with a subscriber, from requiring the provider's approval for any increase in the number of those outlets used.

History: 1987 a. 345; 1993 a. 496; 2001 a. 109; 2007 a. 42.

943.47 Theft of satellite cable programming. (1) DEFINITIONS. In this section:

(a) "Encrypt", when used with respect to satellite cable programming, means to transmit that programming in a form whereby the aural or visual characteristics or both are altered to prevent the unauthorized reception of that programming by persons without authorized equipment which is designed to eliminate the effects of that alteration.

(b) "Satellite cable programming" means encrypted video programming which is transmitted via satellite for direct reception by satellite dish owners for a fee.

(2) PROHIBITIONS. No person may decode encrypted satellite cable programming without authority.

(3) CRIMINAL PENALTIES. The following penalties apply for violations of this section:

(a) Except as provided in pars. (b) to (d), any person who intentionally violates sub. (2) is subject to a Class C forfeiture.

(b) Except as provided in pars. (c) and (d), any person who violates sub. (2) as a 2nd or subsequent offense is guilty of a Class B misdemeanor.

(c) Except as provided in par. (d), any person who violates sub. (2) for direct or indirect commercial advantage or private financial gain is guilty of a Class A misdemeanor.

(d) Any person who violates sub. (2) for direct or indirect commercial advantage or private financial gain as a 2nd or subsequent offense is guilty of a Class I felony.

(5) EXCEPTION. This section does not affect the use by a person of satellite cable programming if the programming has been paid for and the use is exclusive to the person's dwelling unit.

History: 1987 a. 345; 1993 a. 496; 2001 a. 109.

943.48 Telecommunications; civil liability. (1) Any person who incurs injury as a result of a violation of s. 943.45 (1), 943.455 (2), 943.46 (2) or 943.47 (2) may bring a civil action against the person who committed the violation.

(1m) Except as provided in sub. (2), if the person who incurs the loss prevails, the court shall grant the prevailing party actual damages, costs and disbursements.

(2) If the person who incurs the loss prevails against a person who committed the violation willfully and for the purpose of commercial advantage or prevails against a person who has committed more than one violation of s. 943.45 (1), 943.455 (2), 943.46 (2) or 943.47 (2), the court shall grant the prevailing party all of the following:

(a) Except as provided in subs. (2g) and (2r), not more than $10,000.

(b) Actual damages.

(c) Any profits of the violator that are attributable to the violation and that are not taken into account in determining the amount of actual damages under par. (b).

(d) Notwithstanding the limitations under s. 799.25 or 814.04, costs, disbursements and reasonable attorney fees.

(2g) If the court finds that the violation was committed willfully and for the purpose of commercial advantage, the court may increase the amount granted under sub. (2) (a) to an amount not to exceed $50,000.

(2r) If the court finds that the violator had no reason to believe that the violator's action constituted a violation of this section, the court may reduce the amount granted under sub. (2) (a).

(3) If damages under sub. (2) (c) are requested, the party who incurred the injury shall have the burden of proving the violator's gross revenue and the violator shall have the burden of proving the violator's deductible expenses and the elements of profit attributable to factors other than the violation.

(4) In addition to other remedies available under this section, the court may grant the injured party a temporary or permanent injunction.

History: 1993 a. 496.

943.49 Unlawful use of recording device in motion picture theater. (1) DEFINITIONS. In this section:

(a) "Motion picture theater" means a site used for the exhibition of a motion picture to the public.

(b) "Recording" has the meaning given in s. 943.206 (5).

(c) "Recording device" means a camera, an audio or video recorder or any other device that may be used to record or transfer sounds or images.

(d) "Theater owner" means an owner or operator of a motion picture theater.

(2) USE OF RECORDING DEVICE IN MOVIE THEATER. (a) No person may operate a recording device in a motion picture theater without written consent from the theater owner or a person authorized by the theater owner to provide written consent.

(b) 1. Except as provided in subd. 2., a person who violates par. (a) is guilty of a Class A misdemeanor.

2. A person who violates par. (a) is guilty of a Class I felony if the violation occurs after the person has been convicted under this subsection.

(4) DETENTION OF PERSON COMMITTING VIOLATION. A theater owner, a theater owner's adult employee or a theater owner's

security agent who has reasonable cause to believe that a person has violated this section in his or her presence may detain the person in a reasonable manner for a reasonable length of time to deliver the person to a peace officer or to his or her parent or guardian in the case of a minor. The detained person must be promptly informed of the purpose for the detention and be permitted to make phone calls, but he or she shall not be interrogated or searched against his or her will before the arrival of a peace officer who may conduct a lawful interrogation of the accused person. The theater owner, the theater owner's adult employee or the theater owner's security agent may release the detained person before the arrival of a peace officer or parent or guardian. Any theater owner, theater owner's adult employee or theater owner's security agent who acts in good faith in any act authorized under this section is immune from civil or criminal liability for those acts.

History: 1999 a. 51; 2001 a. 109.

943.50 Retail theft. (1) In this section:

(a) "Merchant" includes any "merchant" as defined in s. 402.104 (3) or any innkeeper, motelkeeper or hotelkeeper.

(ar) "Theft detection device" means any tag or other device that is used to prevent or detect theft and that is attached to merchandise held for resale by a merchant or to property of a merchant.

(as) "Theft detection device remover" means any tool or device used, designed for use or primarily intended for use in removing a theft detection device from merchandise held for resale by a merchant or property of a merchant.

(at) "Theft detection shielding device" means any laminated or coated bag or device designed to shield merchandise held for resale by a merchant or property of a merchant from being detected by an electronic or magnetic theft alarm sensor.

(b) "Value of merchandise" means:

1. For property of the merchant, the value of the property; or

2. For merchandise held for resale, the merchant's stated price of the merchandise or, in the event of altering, transferring or removing a price marking or causing a cash register or other sales device to reflect less than the merchant's stated price, the difference between the merchant's stated price of the merchandise and the altered price.

(1m) A person may be penalized as provided in sub. (4) if he or she does any of the following without the merchant's consent and with intent to deprive the merchant permanently of possession or the full purchase price of the merchandise or property:

(a) Intentionally alters indicia of price or value of merchandise held for resale by a merchant or property of a merchant.

(b) Intentionally takes and carries away merchandise held for resale by a merchant or property of a merchant.

(c) Intentionally transfers merchandise held for resale by a merchant or property of a merchant.

(d) Intentionally conceals merchandise held for resale by a merchant or property of a merchant.

(e) Intentionally retains possession of merchandise held for resale by a merchant or property of a merchant.

(f) While anywhere in the merchant's store, intentionally removes a theft detection device from merchandise held for resale by a merchant or property of a merchant.

(g) Uses, or possesses with intent to use, a theft detection shielding device to shield merchandise held for resale by a merchant or property of merchant from being detected by an electronic or magnetic theft alarm sensor.

(h) Uses, or possesses with intent to use, a theft detection device remover to remove a theft detection device from merchandise held for resale by a merchant or property of a merchant.

(3) A merchant, a merchant's adult employee or a merchant's security agent who has reasonable cause for believing that a person has violated this section in his or her presence may detain the person in a reasonable manner for a reasonable length of time to deliver the person to a peace officer, or to his or her parent or guardian in the case of a minor. The detained person must be promptly informed of the purpose for the detention and be permitted to make phone calls, but he or she shall not be interrogated or searched against his or her will before the arrival of a peace officer who may conduct a lawful interrogation of the accused person. The merchant, merchant's adult employee or merchant's security agent may release the detained person before the arrival of a peace officer or parent or guardian. Any merchant, merchant's adult employee or merchant's security agent who acts in good faith in any act authorized under this section is immune from civil or criminal liability for those acts.

(3m) (a) In any action or proceeding for violation of this section, duly identified and authenticated photographs of merchandise which was the subject of the violation may be used as evidence in lieu of producing the merchandise.

(b) A merchant or merchant's adult employee is privileged to defend property as prescribed in s. 939.49.

(4) Whoever violates this section is guilty of:

(a) A Class A misdemeanor, if the value of the merchandise does not exceed $2,500.

(bf) A Class I felony, if the value of the merchandise exceeds $2,500 but does not exceed $5,000.

(bm) A Class H felony, if the value of the merchandise exceeds $5,000 but does not exceed $10,000.

(c) A Class G felony, if the value of the merchandise exceeds $10,000.

(5) (a) In addition to the other penalties provided for violation of this section, a judge may order a violator to pay restitution under s. 973.20.

(b) In actions concerning violations of ordinances in conformity with this section, a judge may order a violator to make restitution under s. 800.093.

(c) If the court orders restitution under pars. (a) and (b), any amount of restitution paid to the victim under one of those paragraphs reduces the amount the violator must pay in restitution to that victim under the other paragraph.

History: 1977 c. 173; 1981 c. 270; 1983 a. 189 s. 329 (24); 1985 a. 179; 1987 a. 398; 1991 a. 39, 40; 1993 a. 71; 1997 a. 262; 2001 a. 16, 109.

A merchant acted reasonably in detaining an innocent shopper for 20 minutes and releasing her without summoning police. Johnson v. K−Mart Enterprises, Inc. 98 Wis. 2d 533, 297 N.W.2d 74 (Ct. App. 1980).

Sub. (3) requires only that the merchant's employee have probable cause to believe that the person violated this section in the employee's presence; actual theft need not be committed in the employee's presence. State v. Lee, 157 Wis. 2d 126, 458 N.W.2d 562 (Ct. App. 1990).

Reasonableness under sub. (3) requires: 1) reasonable cause to believe that the person violated this section; 2) that the manner of the detention and the actions taken in an attempt to detain must be reasonable; and 3) that the length of the detention and the actions taken in an attempt to detain must be reasonable. An attempt to detain may include pursuit, including reasonable pursuit off the merchant's premises. Peters v. Menard, Inc. 224 Wis. 2d 174, 589 N.W.2d 395 (1999), 97−1514.

Shoplifting: protection for merchants in Wisconsin. 57 MLR 141.

943.51 Retail theft; civil liability. (1) Any person who incurs injury to his or her business or property as a result of a violation of s. 943.50 may bring a civil action against any individual who caused the loss for all of the following:

(a) The retail value of the merchandise unless it is returned undamaged and unused. A person may recover under this paragraph only if he or she exercises due diligence in demanding the return of the merchandise immediately after he or she discovers the loss and the identity of the person who has the merchandise.

(b) Any actual damages not covered under par. (a).

(2) In addition to sub. (1), if the person who incurs the loss prevails, the judgment in the action may grant any of the following:

(a) 1. Except as provided in subd. 1m., exemplary damages of not more than 3 times the amount under sub. (1).

1m. If the action is brought against a minor or against the parent who has custody of their minor child for the loss caused by the minor, the exemplary damages may not exceed 2 times the amount under sub. (1).

2. No additional proof is required for an award of exemplary damages under this paragraph.

(b) Notwithstanding the limitations of s. 799.25 or 814.04, all actual costs of the action, including reasonable attorney fees.

(3) Notwithstanding sub. (2) and except as provided in sub. (3m), the total amount awarded for exemplary damages and reasonable attorney fees may not exceed $500 for each violation.

(3m) Notwithstanding sub. (2), the total amount awarded for exemplary damages and reasonable attorney fees may not exceed $300 for each violation if the action is brought against a minor or against the parent who has custody of their minor child for the loss caused by the minor.

(3r) Any recovery under this section shall be reduced by the amount recovered as restitution for the same act under ss. 800.093 and 973.20 or as recompense under s. 969.13 (5) (a) for the same act.

(4) The plaintiff has the burden of proving by a preponderance of the evidence that a violation occurred under s. 943.50. A conviction under s. 943.50 is not a condition precedent to bringing an action, obtaining a judgment or collecting that judgment under this section.

(5) A person is not criminally liable under s. 943.30 for any civil action brought in good faith under this section.

(6) Nothing in this section precludes a plaintiff from bringing the action under ch. 799 if the amount claimed is within the jurisdictional limits of s. 799.01 (1) (d).

History: 1985 a. 179; 1989 a. 31; 1993 a. 71; 1995 a. 77; 2003 a. 138; 2005 a. 447.

Employee salary for time spent processing retail theft is compensable as "actual damages" under sub. (1) (b). Shopko Stores, Inc. v. Kujak, 147 Wis. 2d 589, 433 N.W.2d 618 (Ct. App. 1988).

943.55 Removal of shopping cart. Whoever intentionally removes a shopping cart or stroller from either the shopping area or a parking area adjacent to the shopping area to another place without authorization of the owner or person in charge and with the intent to deprive the owner permanently of possession of such property shall forfeit an amount not to exceed $500 for each shopping cart or stroller so removed.

History: 1977 c. 99; 2003 a. 159.

943.60 Criminal slander of title. (1) Any person who submits for filing, entering or recording any lien, claim of lien, lis pendens, writ of attachment, financing statement or any other instrument relating to a security interest in or title to real or personal property, and who knows or should have known that the contents or any part of the contents of the instrument are false, a sham or frivolous, is guilty of a Class H felony.

(2) This section applies to any person who causes another person to act in the manner specified in sub. (1).

(3) This section does not apply to a register of deeds or other government employee who acts in the course of his or her official duties and files, enters or records any instrument relating to title on behalf of another person.

History: 1979 c. 221; 1995 a. 224; 1997 a. 27; 2001 a. 109.

Whether a document is frivolous was for the jury to answer. State v. Leist, 141 Wis. 2d 34, 414 N.W.2d 45 (Ct. App. 1987).

943.61 Theft of library material. (1) In this section:

(a) "Archives" means a place in which public or institutional records are systematically preserved.

(b) "Library" means any public library; library of an educational, historical or eleemosynary institution, organization or society; archives; or museum.

(c) "Library material" includes any book, plate, picture, photograph, engraving, painting, drawing, map, newspaper, magazine, pamphlet, broadside, manuscript, document, letter, public record, microform, sound recording, audiovisual materials in any format, magnetic or other tapes, electronic data processing records, artifacts or other documentary, written or printed materials, regardless of physical form or characteristics, belonging to, on loan to or otherwise in the custody of a library.

(2) Whoever intentionally takes and carries away, transfers, conceals or retains possession of any library material without the consent of a library official, agent or employee and with intent to deprive the library of possession of the material may be penalized as provided in sub. (5).

(3) The concealment of library material beyond the last station for borrowing library material in a library is evidence of intent to deprive the library of possession of the material. The discovery of library material which has not been borrowed in accordance with the library's procedures or taken with consent of a library official, agent or employee and which is concealed upon the person or among the belongings of the person or concealed by a person upon the person or among the belongings of another is evidence of intentional concealment on the part of the person so concealing the material.

(4) An official or adult employee or agent of a library who has probable cause for believing that a person has violated this section in his or her presence may detain the person in a reasonable manner for a reasonable length of time to deliver the person to a peace officer, or to the person's parent or guardian in the case of a minor. The detained person shall be promptly informed of the purpose for the detention and be permitted to make phone calls, but shall not be interrogated or searched against his or her will before the arrival of a peace officer who may conduct a lawful interrogation of the accused person. Compliance with this subsection entitles the official, agent or employee effecting the detention to the same defense in any action as is available to a peace officer making an arrest in the line of duty.

(5) Whoever violates this section is guilty of:

(a) A Class A misdemeanor, if the value of the library materials does not exceed $2,500.

(c) A Class H felony, if the value of the library materials exceeds $2,500.

History: 1979 c. 245; Stats. 1979 s. 943.60; 1979 c. 355 s. 232; Stats. 1979 s. 943.61; 1991 a. 39; 2001 a. 16, 109.

943.62 Unlawful receipt of payments to obtain loan for another. (1) In this section, "escrow agent" means a state or federally chartered bank, savings bank, savings and loan association or credit union located in this state.

(2) Except as provided in sub. (2m), no person may receive a payment from a customer as an advance fee, salary, deposit or money for the purpose of obtaining a loan or a lease of personal property for the customer unless the payment is immediately placed in escrow subject to the condition that the escrow agent shall deliver the payment to the person only upon satisfactory proof of the closing of the loan or execution of the lease within a period of time agreed upon in writing between the person and the customer; otherwise the payment shall be returned to the customer immediately upon expiration of the time period.

(2m) This section does not apply to a savings and loan association, credit union, bank, savings bank, or a mortgage banker, mortgage loan originator, or mortgage broker licensed under s. 224.72 or 224.725.

(3) (a) Advance payments to cover reasonably estimated costs are excluded from the requirements of sub. (2) if the customer first signs a written agreement which recites in capital and lowercase letters of not less than 12−point boldface type all of the following:

1. The estimated costs by item.

2. The estimated total costs.

3. Money advanced for incurred costs will not be refunded.

(b) If a cost under par. (a) is not incurred, the person shall refund that amount to the customer.

(4) Whoever violates this section is guilty of:

(a) A Class A misdemeanor, if the value of the advance payment or required refund, as applicable, does not exceed $2,500.

(c) A Class F felony, if the value of the advance payment or required refund, as applicable, exceeds $2,500.

History: 1981 c. 20; 1983 a. 167; 1987 a. 359; 1987 a. 403 s. 256; 1995 a. 27; 1997 a. 145; 2001 a. 16, 109; 2009 a. 2.

943.70 Computer crimes. (1) DEFINITIONS. In this section:

(ag) "Access" means to instruct, communicate with, interact with, intercept, store data in, retrieve data from, or otherwise use the resources of.

(am) "Computer" means an electronic device that performs logical, arithmetic and memory functions by manipulating electronic or magnetic impulses, and includes all input, output, processing, storage, computer software and communication facilities that are connected or related to a computer in a computer system or computer network.

(b) "Computer network" means the interconnection of communication lines with a computer through remote terminals or a complex consisting of 2 or more interconnected computers.

(c) "Computer program" means an ordered set of instructions or statements that, when executed by a computer, causes the computer to process data.

(d) "Computer software" means a set of computer programs, procedures or associated documentation used in the operation of a computer system.

(dm) "Computer supplies" means punchcards, paper tape, magnetic tape, disk packs, diskettes and computer output, including paper and microform.

(e) "Computer system" means a set of related computer equipment, hardware or software.

(f) "Data" means a representation of information, knowledge, facts, concepts or instructions that has been prepared or is being prepared in a formalized manner and has been processed, is being processed or is intended to be processed in a computer system or computer network. Data may be in any form including computer printouts, magnetic storage media, punched cards and as stored in the memory of the computer. Data are property.

(g) "Financial instrument" includes any check, draft, warrant, money order, note, certificate of deposit, letter of credit, bill of exchange, credit or credit card, transaction authorization mechanism, marketable security and any computer representation of them.

(gm) "Interruption in service" means inability to access a computer, computer program, computer system, or computer network, or an inability to complete a transaction involving a computer.

(h) "Property" means anything of value, including but not limited to financial instruments, information, electronically produced data, computer software and computer programs.

(i) "Supporting documentation" means all documentation used in the computer system in the construction, clarification, implementation, use or modification of the software or data.

(2) OFFENSES AGAINST COMPUTER DATA AND PROGRAMS. (a) Whoever willfully, knowingly and without authorization does any of the following may be penalized as provided in pars. (b) and (c):

1. Modifies data, computer programs or supporting documentation.

2. Destroys data, computer programs or supporting documentation.

3. Accesses computer programs or supporting documentation.

4. Takes possession of data, computer programs or supporting documentation.

5. Copies data, computer programs or supporting documentation.

6. Discloses restricted access codes or other restricted access information to unauthorized persons.

(am) Whoever intentionally causes an interruption in service by submitting a message, or multiple messages, to a computer, computer program, computer system, or computer network that exceeds the processing capacity of the computer, computer program, computer system, or computer network may be penalized as provided in pars. (b) and (c).

(b) Whoever violates par. (a) or (am) is guilty of:

1. A Class A misdemeanor unless any of subds. 2. to 4. applies.

2. A Class I felony if the offense is committed to defraud or to obtain property.

3g. A Class F felony if the offense results in damage valued at more than $2,500.

3r. A Class F felony if the offense causes an interruption or impairment of governmental operations or public communication, of transportation, or of a supply of water, gas, or other public service.

4. A Class F felony if the offense creates a substantial and unreasonable risk of death or great bodily harm to another.

(c) If a person disguises the identity or location of the computer at which he or she is working while committing an offense under par. (a) or (am) with the intent to make it less likely that he or she will be identified with the crime, the penalties under par. (b) may be increased as follows:

1. In the case of a misdemeanor, the maximum fine prescribed by law for the crime may be increased by not more than $1,000 and the maximum term of imprisonment prescribed by law for the crime may be increased so that the revised maximum term of imprisonment is one year in the county jail.

2. In the case of a felony, the maximum fine prescribed by law for the crime may be increased by not more than $2,500 and the maximum term of imprisonment prescribed by law for the crime may be increased by not more than 2 years.

(3) OFFENSES AGAINST COMPUTERS, COMPUTER EQUIPMENT OR SUPPLIES. (a) Whoever willfully, knowingly and without authorization does any of the following may be penalized as provided in par. (b):

1. Modifies computer equipment or supplies that are used or intended to be used in a computer, computer system or computer network.

2. Destroys, uses, takes or damages a computer, computer system, computer network or equipment or supplies used or intended to be used in a computer, computer system or computer network.

(b) Whoever violates this subsection is guilty of:

1. A Class A misdemeanor unless subd. 2., 3. or 4. applies.

2. A Class I felony if the offense is committed to defraud or obtain property.

3. A Class H felony if the damage to the computer, computer system, computer network, equipment or supplies is greater than $2,500.

4. A Class F felony if the offense creates a substantial and unreasonable risk of death or great bodily harm to another.

(4) COMPUTER USE RESTRICTION. In addition to the other penalties provided for violation of this section, a judge may place restrictions on the offender's use of computers. The duration of any such restrictions may not exceed the maximum period for which the offender could have been imprisoned; except if the offense is punishable by forfeiture, the duration of the restrictions may not exceed 90 days.

(5) INJUNCTIVE RELIEF. Any aggrieved party may sue for injunctive relief under ch. 813 to compel compliance with this section. In addition, owners, lessors, users or manufacturers of com-

puters, or associations or organizations representing any of those persons, may sue for injunctive relief to prevent or stop the disclosure of information which may enable another person to gain unauthorized access to data, computer programs or supporting documentation.

History: 1981 c. 293; 1983 a. 438, 541; 1987 a. 399; 2001 a. 16, 109.

Judicial Council Note, 1988: [In (2) (b) 4. and (3) (b) 4.] The words "substantial risk" are substituted for "high probability" to avoid any inference that a statistical likelihood greater than 50% was ever intended. [Bill 191−S]

This section is constitutional. Copyright law does not give a programmer a copyright in data entered into the programmer's program, and copyright law does not preempt prosecution of the programmer for destruction of data entered into the program. State v. Corcoran, 186 Wis. 2d 616, 522 N.W.2d 226 (Ct. App. 1994).

"Access codes or other restricted access information" in sub. (2) (a) 6. refers to codes, passwords, or other information that permits access to a computer system or to programs or data within a system; the phrase does not refer to the system, program, or data accessed. The statute was not meant to criminalize the disclosure of all types of information that could be stored on a computer, when that information was obtained with authorization in the first instance. Burbank Grease Services v. Sokolowski, 2006 WI 103, 294 Wis. 2d 274, 717 N.W.2d 781, 04−0468.

Criminal liability for computer offenses and the new Wisconsin computer crimes act. Levy. WBB March 1983.

21st Century White Collar Crime: Intellectual Property Crimes in the Cyber World. Simon & Jones. Wis. Law. Oct. 2004.

943.74 Theft of farm−raised fish. (1) In this section:

(a) "Farm−raised fish" means a fish that is kept on a fish farm for propagation purposes or reared on a fish farm and that has not been introduced, stocked, or planted into waters outside a fish farm and that has not escaped from a fish farm.

(b) "Fish farm" means a facility at which a person, including this state or a local governmental unit, hatches fish eggs or rears fish for the purpose of introduction into the waters of the state, human or animal consumption, permitting fishing, or use as bait or fertilizer or for sale to another person to rear for one of those purposes.

(c) "Local governmental unit" means a political subdivision of this state, a special purpose district in this state, an instrumentality or corporation of the political subdivision or special purpose district, or a combination or subunit of any of the foregoing.

(2) No person may intentionally take and carry away, transfer, conceal, or retain possession of farm−raised fish of another without the other's consent and with intent to deprive the owner permanently of possession of the farm−raised fish.

(3) (a) Except as provided in par. (b), whoever violates sub. (2) is guilty of a Class A misdemeanor.

(b) Whoever violates sub. (2) after having been convicted of a violation of sub. (2) is guilty of a Class D felony.

History: 2001 a. 91, 105.

943.75 Unauthorized release of animals. (1) In this section:

(ad) "Animal" means all vertebrate and invertebrate species, including mammals, birds, fish and shellfish but excluding humans.

(am) "Humane officer" means an officer appointed under s. 173.03.

(b) "Local health officer" has the meaning given in s. 250.01 (5).

(2) Whoever intentionally releases an animal that is lawfully confined for companionship or protection of persons or property, recreation, exhibition, or educational purposes, acting without the consent of the owner or custodian of the animal, is guilty of a Class C misdemeanor. A 2nd violation of this subsection by a person is a Class A misdemeanor. A 3rd or subsequent violation of this subsection by a person is a Class I felony.

(2m) Whoever intentionally releases an animal that is lawfully confined for scientific, farming, restocking, research or commercial purposes, acting without the consent of the owner or custodian of the animal, is guilty of a Class H felony.

(3) Subsections (2) and (2m) do not apply to any humane officer, local health officer, peace officer, employee of the department of natural resources while on any land licensed under s. 169.15, 169.18, or 169.19, subject to certification under s. 90.21, or designated as a wildlife refuge under s. 29.621 (1) or employee of the department of agriculture, trade and consumer protection if the officer's or employee's acts are in good faith and in an apparently authorized and reasonable fulfillment of his or her duties. This subsection does not limit any other person from claiming the defense of privilege under s. 939.45 (3).

(4) When the existence of an exception under sub. (3) has been placed in issue by the trial evidence, the state must prove beyond a reasonable doubt that the facts constituting the exception do not exist in order to sustain a finding of guilt under sub. (2) or (2m).

History: 1991 a. 20, 269; 1993 a. 27; 1995 a. 79; 1997 a. 27, 192, 248; 1999 a. 45; 2001 a. 56, 109.

943.76 Infecting animals with a contagious disease. (1) In this section:

(a) "Livestock" means cattle, horses, swine, sheep, goats, farm−raised deer, as defined in s. 95.001 (1) (ag), poultry, and other animals used or to be used in the production of food, fiber, or other commercial products.

(b) "Paratuberculosis" has the meaning given in s. 95.001 (1) (c).

(c) "Reckless conduct" means conduct that creates a substantial risk of an animal's death or a substantial risk of bodily harm to an animal if the actor is aware of that risk.

(2) (a) Whoever intentionally introduces a contagious or infectious disease into livestock without the consent of the owner of the livestock is guilty of a Class F felony.

(b) Whoever intentionally introduces a contagious or infectious disease into wild deer without the consent of the department of natural resources is guilty of a Class F felony.

(3) (a) Whoever, through reckless conduct, introduces a contagious or infectious disease other than paratuberculosis into livestock without the consent of the owner of the livestock is guilty of a Class A misdemeanor.

(b) Whoever, through reckless conduct, introduces a contagious or infectious disease other than paratuberculosis into wild deer without the consent of the department of natural resources is guilty of a Class A misdemeanor.

(c) This subsection does not apply if the actor's conduct is undertaken pursuant to a directive issued by the department of agriculture, trade and consumer protection or an agreement between the actor and the department of agriculture, trade and consumer protection, if the purpose of the directive or the agreement is to prevent or control the spread of the disease.

(4) (a) Whoever intentionally threatens to introduce a contagious or infectious disease into livestock located in this state without the consent of the owner of the livestock is guilty of a Class H felony if one of the following applies:

1. The owner of the livestock is aware of the threat and reasonably believes that the actor will attempt to carry out the threat.

2. The owner of the livestock is unaware of the threat, but if the owner were apprised of the threat, it would be reasonable for the owner to believe that the actor would attempt to carry out the threat.

(b) Whoever intentionally threatens to introduce a contagious or infectious disease into wild deer located in this state without the consent of the department of natural resources is guilty of a Class H felony if one of the following applies:

1. The department of natural resources is aware of the threat and reasonably believes that the actor will attempt to carry out the threat.

2. The department of natural resources is unaware of the threat, but if the department were apprised of the threat, it would be reasonable for the department to believe that the actor would attempt to carry out the threat.

History: 2001 a. 16, 109; 2003 a. 321.

SUBCHAPTER IV

CRIMES AGAINST FINANCIAL INSTITUTIONS

943.80 Definitions. In this subchapter:

(1) "Financial crime" means a crime under ss. 943.81 to 943.90 or any other felony committed against a financial institution or an attempt or conspiracy to commit one of these crimes.

(2) "Financial institution" means a bank, as defined in s. 214.01 (1) (c), a savings bank, as defined in s. 214.01 (1) (t), a savings and loan association, a trust company, a credit union, as defined in s. 186.01 (2), a mortgage banker, as defined in s. 224.71 (3) (a), or a mortgage broker, as defined in s. 224.71 (4) (a), whether chartered under the laws of this state, another state or territory, or under the laws of the United States; a company that controls, is controlled by, or is under common control with a bank, a savings bank, a savings and loan association, a trust company, a credit union, a mortgage banker, or a mortgage broker; or a person licensed under s. 138.09, other than a person who agrees for a fee to hold a check for a period of time before negotiating or presenting the check for payment and other than a pawnbroker, as defined in s. 138.10 (1) (a).

History: 2005 a. 212.

943.81 Theft from a financial institution. Whoever knowingly uses, transfers, conceals, or takes possession of money, funds, credits, securities, assets, or property owned by or under the custody or control of a financial institution without authorization from the financial institution and with intent to convert it to his or her own use or to the use of any person other than the owner or financial institution may be penalized as provided in s. 943.91.

History: 2005 a. 212.

943.82 Fraud against a financial institution. (1) Whoever obtains money, funds, credits, assets, securities, or other property owned by or under the custody or control of a financial institution by means of false pretenses, representations, or promises, or by use of any fraudulent device, scheme, artifice, or monetary instrument may be penalized as provided in s. 943.91.

(2) Whoever falsely represents that he or she is a financial institution or a representative of a financial institution for the purpose of obtaining money, goods, or services from any person or for the purpose of obtaining or recording a person's personal identifying information, as defined in s. 943.201 (1) (b), is guilty of Class H felony.

History: 2005 a. 212.

943.83 Loan fraud. Whoever with intent to defraud a financial institution knowingly overvalues or makes a false statement concerning any land, security, or other property for the purpose of influencing the financial institution to take or defer any action in connection with a loan or loan application may be penalized as provided in s. 943.91 according to the value of the loan.

History: 2005 a. 212.

943.84 Transfer of encumbered property. (1) Whoever, with intent to defraud, conveys real property which he or she knows is encumbered, without informing the grantee of the existence of the encumbrance may be penalized as provided in s. 943.91.

(2) Whoever, with intent to defraud, does any of the following may be penalized as provided in s. 943.91:

(a) Conceals, removes or transfers any personal property in which he or she knows another has a security interest; or

(b) In violation of the security agreement, fails or refuses to pay over to the secured party the proceeds from the sale of property subject to a security interest.

(3) It is prima facie evidence of an intent to defraud within the meaning of sub. (2) (a) if a person, with knowledge that the security interest exists, removes or sells the property without either the consent of the secured party or authorization by the security agreement and fails within 72 hours after service of written demand for the return of the property either to return it or, in the event that return is not possible, to make full disclosure to the secured party of all the information the person has concerning its disposition, location and possession.

(4) In this section "security interest" means an interest in property which secures payment or other performance of an obligation; "security agreement" means the agreement creating the security interest; "secured party" means the person designated in the security agreement as the person in whose favor there is a security interest or, in the case of an assignment of which the debtor has been notified, the assignee.

(5) In prosecutions for violation of sub. (2) arising out of transfers of livestock subject to a security agreement in violation of the terms of the security agreement, evidence that the debtor who transferred the livestock signed or endorsed any writing arising from the transaction, including a check or draft, which states that the transfer of the livestock is permitted by the secured party establishes a rebuttable presumption of intent to defraud.

History: 1977 c. 173; 1979 c. 144; 1993 a. 486; 2001 a. 109; 2005 a. 212 s. 7m; Stats. 2005 s. 943.84.

It is not necessary that a security interest be perfected by filing to support a conviction under this section. State v. Tew, 54 Wis. 2d 361, 195 N.W.2d 615 (1972).

"Removal" under sub. (2) (a) refers to a permanent change in situs, not necessarily across state lines. A showing of diligence by the secured party in seeking the secured property is not required. Jameson v. State, 74 Wis. 2d 176, 246 N.W.2d 501 (1976).

Sub. (1) is not unconstitutionally vague. Liens were effective as encumbrances on the date work was performed or materials supplied. State v. Lunz, 86 Wis. 2d 695, 273 N.W.2d 767 (1979).

943.85 Bribery involving a financial institution. (1) Whoever, with intent to defraud a financial institution, confers, offers, or agrees to confer a benefit on an employee, agent, or fiduciary of the financial institution without the consent of the financial institution and with intent to influence the employee's, agent's, or fiduciary's conduct in relation to the affairs of the institution is guilty of a Class H felony.

(2) Any employee, agent, or fiduciary of a financial institution who without the consent of the financial institution and with intent to defraud the financial institution solicits, accepts, or agrees to accept any benefit from another person pursuant to an agreement that the employee, agent, or fiduciary will act in a certain manner in relation to the affairs of the financial institution is guilty of a Class H felony.

History: 2005 a. 212.

943.86 Extortion against a financial institution. Whoever for the purpose of obtaining money, funds, credits, securities, assets, or property owned by or under the custody or control of a financial institution threatens to cause bodily harm to an owner, employee, or agent of a financial institution or to cause damage to property owned by or under the custody or control of the financial institution is guilty of a Class H felony.

History: 2005 a. 212.

943.87 Robbery of a financial institution. Whoever by use of force or threat to use imminent force takes from an individual or in the presence of an individual money or property that is owned by or under the custody or control of a financial institution is guilty of Class C felony.

History: 2005 a. 212.

943.88 Organizer of financial crimes. Whoever commits 3 or more financial crimes within an 18−month period is guilty of a Class E felony if all of the following conditions apply:

(1) Each of the crimes is committed in concert with a person whom the actor supervises, organizes, finances, or manages. The person need not be the same for each of the crimes.

(2) At least one of the crimes is committed on or after April 11, 2006.

History: 2005 a. 212.

943.89 Mail fraud. Whoever does any of the following to further commission of a financial crime or to sell, dispose of, loan,

exchange, alter, give away, distribute, supply, furnish, or procure for an unlawful purpose any counterfeit currency, obligation, or security is guilty of a Class H felony:

(1) Deposits or causes any matter to be deposited in a United States post office or authorized depository for United States mail.

(2) Deposits or causes to be deposited any matter or thing to be sent or delivered by a commercial carrier.

(3) Takes or receives any matter or a thing sent or delivered by United States mail or by a commercial carrier.

History: 2005 a. 212.

943.90 Wire fraud against a financial institution. Whoever transmits or causes to be transmitted electrically, electromagnetically, or by light any signal, writing, image, sound, or data for the purpose of committing a financial crime is guilty of a Class H felony.

History: 2005 a. 212.

943.91 Penalties. Whoever violates s. 943.81, 943.82 (1), 943.83, or 943.84 is guilty of the following:

(1) If the value of the money, funds, credits, securities, assets, property, proceeds from sale, or loan does not exceed $500, a Class A misdemeanor.

(2) If the value of the money, funds, credits, securities, assets, property, proceeds from sale, or loan does not exceed $500, and the person has previously been convicted of an misdemeanor or felony under s. 943.10, 943.12, 943.20 to 943.75, or 943.81 to 943.90, a Class I felony.

(3) If the value of the money, funds, credits, securities, assets, property, proceeds from sale, or loan exceeds $500 but does not exceed $10,000, a Class H felony.

(4) If the value of the money, funds, credits, securities, assets, property, proceeds from sale, or loan exceeds $10,000 but does not exceed $100,000, a Class G felony.

(5) If the value of the money, funds, credits, securities, assets, property, proceeds from sale, or loan exceeds $100,000, a Class E felony.

History: 2005 a. 212.

943.92 Increased penalty for multiple financial crimes. If a person is convicted of committing 3 or more financial crimes in an 18−month period, the term of imprisonment for the 3rd or subsequent crime in the 18−month period may be increased as follows:

(1) A maximum term of imprisonment of one year or less may be increased to not more than 2 years.

(2) A maximum term of imprisonment of more than one year but not more than 10 years may be increased by not more than 2 years if the prior convictions were for misdemeanors and by not more than 4 years if at least one of the prior convictions was for a felony.

(3) A maximum term of imprisonment of more than 10 years may be increased by not more than 2 years if the prior convictions were for misdemeanors and by not more than 6 years if at least one of the prior convictions was for a felony.

History: 2005 a. 212.