

1981 Assembly Bill 398

Date published: March 2, 1982

## CHAPTER 118 , Laws of 1981

AN ACT to repeal 943.30 (3) (b); to renumber and amend 943.30 (3) (a); to amend 939.31 and 939.32 (1); and to create 939.32 (1) (c), 940.41 to 940.49, 969.02 (4m) and 969.03 (2m) of the statutes, relating to witnesses and victims and providing penalties.

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

SECTION 1. 939.31 of the statutes is amended to read:

**939.31 Conspiracy.** ~~Whoever~~ Except as provided in ss. 940.43 (4) and 940.45 (4), whoever, with intent that a crime be committed, agrees or combines with another for the purpose of committing that crime may, if one or more of the parties to the conspiracy does an act to effect its object, be fined or imprisoned or both not to exceed the maximum provided for the completed crime; except that for a conspiracy to commit a crime for which the penalty is life imprisonment, the actor is guilty of a Class B felony.

SECTION 2. 939.32 (1) of the statutes is amended to read:

939.32 (1) Whoever attempts to commit a felony or a battery as defined by s. 940.19 or theft as defined by s. 943.20 may be fined or imprisoned or both not to exceed one-half the maximum penalty for the completed crime; ~~except that for an attempt:~~

(a) Whoever attempts to commit a crime for which the penalty is life imprisonment, ~~the actor~~ is guilty of a Class B felony.

(b) Whoever attempts to commit a battery as defined in s. 940.20 (2) is guilty of a Class A misdemeanor.

SECTION 3. 939.32 (1) (c) of the statutes is created to read:

939.32 (1) (c) Whoever attempts to commit a crime under ss. 940.42 to 940.45 is subject to the penalty for the completed act, as provided in s. 940.46.

SECTION 4. 940.41 to 940.49 of the statutes are created to read:

**940.41 Definitions.** In ss. 940.42 to 940.49:

(1) "Malice" or "maliciously" means an intent to vex, annoy or injure in any way another person or to thwart or interfere in any manner with the orderly administration of justice.

(2) "Victim" means any natural person against whom any crime as defined in s. 939.12 or under the laws of the United States is being or has been perpetrated or attempted in this state.

(3) "Witness" means any natural person who has been or is expected to be summoned to testify; who by reason of having relevant information is subject to call or likely to be called as a witness, whether or not any action or proceeding has as yet been commenced; whose declaration under oath is received as evidence for any purpose; who has reported any crime to any peace officer or prosecutor; or who has been served with a subpoena issued under s. 885.01 or under the authority of any court of this state or of the United States.

**940.42 Intimidation of witnesses; misdemeanor.** Except as provided in s. 940.43, whoever knowingly and maliciously prevents or dissuades, or who attempts to so prevent or dissuade any witness from attending or giving testimony at any trial, proceeding or inquiry authorized by law, is guilty of a Class A misdemeanor.

**940.43 Intimidation of witnesses; felony.** Whoever violates s. 940.42 under any of the following circumstances is guilty of a Class D felony:

(1) Where the act is accompanied by force or violence or attempted force or violence, upon the witness, or the spouse, child, parent, sibling or grandchild of the witness or any person sharing a common domicile with the witness.

(2) Where the act is accompanied by injury or damage to the real or personal property of any person covered under sub. (1).

(3) Where the act is accompanied by any express or implied threat of force, violence, injury or damage described in sub. (1) or (2).

(4) Where the act is in furtherance of any conspiracy.

(5) Where the act is committed by any person who has suffered any prior conviction for any violation under ss. 940.42 to 940.45, s. 943.30, 1979 stats., or any federal statute or statute of any other state which, if the act prosecuted was committed in this state, would be a violation under ss. 940.42 to 940.45.

(6) Where the act is committed by any person for monetary gain or for any other consideration acting on the request of any other person. All parties to the transactions are guilty under this section.

**940.44 Intimidation of victims; misdemeanor.** Except as provided in s. 940.45, whoever knowingly and maliciously prevents or dissuades, or who attempts to so prevent or dissuade, another person who has been the victim of any crime or who is acting on behalf of the victim from doing any of the following is guilty of a Class A misdemeanor:

(1) Making any report of the victimization to any peace officer or state, local or federal law enforcement or prosecuting agency, or to any judge.

(2) Causing a complaint, indictment or information to be sought and prosecuted and assisting in the prosecution thereof.

(3) Arresting or causing or seeking the arrest of any person in connection with the victimization.

**940.45 Intimidation of victims; felony.** Whoever violates s. 940.44 under any of the following circumstances is guilty of a Class D felony:

(1) Where the act is accompanied by force or violence or attempted force or violence, upon the victim, or the spouse, child, parent, sibling or grandchild of the victim or any person sharing a common domicile with the victim.

(2) Where the act is accompanied by injury or damage to the real or personal property of any person covered under sub. (1).

(3) Where the act is accompanied by any express or implied threat of force, violence, injury or damage described in sub. (1) or (2).

(4) Where the act is in furtherance of any conspiracy.

(5) Where the act is committed by any person who has suffered any prior conviction for any violation under ss. 940.42 to 940.45, s. 943.30, 1979 stats., or any federal statute or statute of any other state which, if the act prosecuted was committed in this state, would be a violation under ss. 940.42 to 940.45.

(6) Where the act is committed by any person for monetary gain or for any other consideration acting on the request of any other person. All parties to the transactions are guilty under this section.

**940.46 Attempt prosecuted as completed act.** Whoever attempts the commission of any act prohibited under ss. 940.42 to 940.45 is guilty of the offense attempted without regard to the success or failure of the attempt. The fact that no person was injured physically or in fact intimidated is not a defense against any prosecution under ss. 940.42 to 940.45.

**940.47 Court orders.** Any court with jurisdiction over any criminal matter, upon substantial evidence, which may include hearsay or the declaration of the prosecutor, that knowing and malicious prevention or dissuasion of any person who is a victim or who is a witness has occurred or is reasonably likely to occur, may issue orders including but not limited to any of the following:

(1) An order that a defendant not violate ss. 940.42 to 940.45.

(2) An order that a person before the court other than a defendant, including, but not limited to, a subpoenaed witness or other person entering the courtroom of the court, not violate ss. 940.42 to 940.45.

(3) An order that any person described in sub. (1) or (2) maintain a prescribed geographic distance from any specified witness or victim.

(4) An order that any person described in sub. (1) or (2) have no communication with any specified witness or any victim, except through an attorney under such reasonable restrictions as the court may impose.

**940.48 Violation of court orders.** Whoever violates an order issued under s. 940.47 may be punished as follows:

(1) If applicable, the person may be prosecuted under ss. 940.42 to 940.45.

(2) As a contempt of court under ch. 785. A finding of contempt is not a bar to prosecution under ss. 940.42 to 940.45, but:

(a) Any person who commits a contempt of court is entitled to credit for any punishment imposed therefor against any sentence imposed on conviction under ss. 940.42 to 940.45; and

(b) Any conviction or acquittal for any substantive offense under ss. 940.42 to 940.45 is a bar to subsequent punishment for contempt arising out of the same act.

(3) By the revocation of any form of pretrial release or forfeiture of bail and the issuance of a bench warrant for the defendant's arrest or remanding the defendant to custody. After hearing and on substantial evidence, the revocation may be made whether the violation of order complained of has been committed by the defendant personally or was caused or encouraged to have been committed by the defendant.

**940.49 Pretrial release.** Any pretrial release of any defendant whether on bail or under any other form of recognizance shall be deemed to include a condition that the defendant neither do, nor cause to be done, nor permit to be done on his or her behalf, any act proscribed by ss. 940.42 to 940.45 and any wilful violation of the condition is subject to

punishment as prescribed in s. 940.48 (3) whether or not the defendant was the subject of an order under s. 940.47.

SECTION 5. 943.30 (3) (a) of the statutes is renumbered 943.30 (3) and amended to read:

943.30 (3) Whoever violates sub. (1) by attempting to influence ~~any witness in any matter, cause, action or proceeding before any court, officer or body mentioned in s. 946.31 (1),~~ or any petit or grand juror, in the performance of his or her functions as such, ~~or to deter any such witness from testifying,~~ is guilty of a Class D felony.

SECTION 6. 943.30 (3) (b) of the statutes is repealed.

SECTION 7. 969.02 (4m) of the statutes is created to read:

969.02 (4m) Any person who is charged with a misdemeanor and released under this section shall comply with s. 940.49. The person shall be given written notice of this requirement.

SECTION 8. 969.03 (2m) of the statutes is created to read:

969.03 (2m) Any person who is charged with a felony and released under this section shall comply with s. 940.49. The person shall be given written notice of this requirement.

SECTION 9. **Cross-reference changes.** In the sections of the statutes listed in Column A, the cross-references shown in Column B are changed to the cross-references shown in Column C:

<b>A</b>	<b>B</b>	<b>C</b>
statute Sections	Old Cross-References	New Cross-References
940.20 (3)	943.30 (3)(b)	940.41 (3)
943.01 (2)(c)	943.30 (3)(b)	940.41 (3)

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