CHAPTER 940

CRIMES AGAINST LIFE AND BODILY SECURITY

NOTE: 1987 Wis. Act 399 included changes in homicide and lesser included offenses. The sections affected had previously passed the senate as 1987 Senate Bill 191, which was prepared by the Judicial Council and contained explanatory notes. These notes have been inserted following the sections affected and are credited to SB 191 as "Bill 191−S". These notes do not appear in the 1987−88 edition of the Wisconsin Statutes.

LIFE.

940.01 First−degree intentional homicide. (1) OFFENSE. Except as provided in sub. (2), whoever causes the death of another human being with intent to kill that person or another is guilty of a Class A felony.

(2) MITIGATING CIRCUMSTANCES. The following are affirmative defenses to prosecution under this section which mitigate the offense to 2nd−degree intentional homicide under s. 940.05:

(a) *Adequate provocation.* Death was caused under the influence of adequate provocation as defined in s. 939.44.

(b) *Unnecessary defensive force.* Death was caused because the actor believed he or she or another was in imminent danger of death or great bodily harm and that the force used was necessary to defend the endangered person, if either belief was unreasonable.

(c) *Prevention of felony.* Death was caused because the actor believed that the force used was necessary in the exercise of the privilege to prevent or terminate the commission of a felony, if that belief was unreasonable.

(d) *Coercion; necessity.* Death was caused in the exercise of a privilege under s. 939.45 (1).

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

History: 1987 a. 399.

Judicial Council Note, 1988: First−degree intentional homicide is analogous to the prior offense of first−degree murder. Sub. (2) formerly contained a narrower definition of "intent to kill" than the general definition of criminal intent. That narrower definition has been eliminated in the interest of uniformity. Section 939.23 now defines the intent referred to.

The affirmative defenses specified in sub. (2) were formerly treated in s. 940.05. This caused confusion because they seemed to be elements of manslaughter rather than defenses to first−degree murder. Sub. (2) specifies only those affirmative defenses which mitigate an intentional homicide from first to 2nd degree. Other affirmative defenses are a defense to 2nd−degree intentional homicide also, such as self−defense, i.e., when both beliefs specified in sub. (2) (b) are reasonable. Section 939.48.

Rule barring psychiatric or psychological opinion testimony on defendant's capacity to form intent to kill is constitutional. Haas v. Abrahamson, 910 F (2d) 384 (1990) citing Steele v. State, 97 W (2d) 72, 294 NW (2d) 2 (1980).

The prosecution is required to prove only that the defendant's acts were a substantial factor in the victim's death—not the sole cause. State v. Block, 170 W (2d) 676, 489 NW (2d) 715 (Ct. App. 1992).

The trial court must apply an objective reasonable view of the evidence test to determine whether under sub. (3) a mitigating affirmative defense "has been placed in issue" before submitting the issue to the jury. In Interest of Shawn B. N. 173 W (2d) 343, 497 NW (2d) 141 (Ct. App. 1992).

Imperfect self−defense contains an initial threshold element requiring a reasonable belief that the defendant was terminating an unlawful interference with his or her person. State v. Camacho, 176 W (2d) 860, 501 NW (2d) 380 (1993).

Importance of clarity in law of homicide: The Wisconsin revision. Dickey, Schultz & Fullin. 1989 WLR 1323 (1989).

State v. Camacho: The Judicial Creation of an Objective Element to Wisconsin's Law of Imperfect Self−defense Homicide. Leiser. 1995 WLR 742.

940.02 First−degree reckless homicide. (1) Whoever recklessly causes the death of another human being under circumstances which show utter disregard for human life is guilty of a Class B felony.

(2) Whoever causes the death of another human being under any of the following circumstances is guilty of a Class B felony:

(a) By manufacture, distribution or delivery, in violation of s. 961.41, of a controlled substance included in schedule I or II under ch. 961 or of a controlled substance analog of a controlled substance included in schedule I or II under ch. 961, if another human being uses the controlled substance or controlled substance analog and dies as a result of that use. This paragraph applies:

1. Whether the human being dies as a result of using the controlled substance or controlled substance analog by itself or with any compound, mixture, diluent or other substance mixed or combined with the controlled substance or controlled substance analog.

2. Whether or not the controlled substance or controlled substance analog is mixed or combined with any compound, mixture, diluent or other substance after the violation of s. 961.41 occurs.

3. To any distribution or delivery described in this paragraph, regardless of whether the distribution or delivery is made directly to the human being who dies. If possession of the controlled substance included in schedule I or II under ch. 961 or of the controlled substance analog of the controlled substance included in schedule I or II under ch. 961 is transferred more than once prior

to the death as described in this paragraph, each person who distributes or delivers the controlled substance or controlled substance analog in violation of s. 961.41 is guilty under this paragraph.

(b) By administering or assisting in administering a controlled substance included in schedule I or II under ch. 961 or a controlled substance analog of a controlled substance included in schedule I or II of ch. 961, without lawful authority to do so, to another human being and that human being dies as a result of the use of the substance. This paragraph applies whether the human being dies as a result of using the controlled substance or controlled substance analog by itself or with any compound, mixture, diluent or other substance mixed or combined with the controlled substance or controlled substance analog.

History: 1987 a. 339, 399; 1995 a. 448.

Judicial Council Note, 1988: [As to sub. (1)] First−degree reckless homicide is analogous to the prior offense of 2nd−degree murder. The concept of "conduct evincing a depraved mind, regardless of human life" has been a difficult one for modern juries to comprehend. To avoid the mistaken connotation that a clinical mental disorder is involved, the offense has been recodified as aggravated reckless homicide. The revision clarifies that a subjective mental state, i.e., criminal recklessness, is required for liability. See s. 939.24. The aggravating element, i.e., circumstances which show utter disregard for human life, is intended to codify judicial interpretations of "conduct evincing a depraved mind, regardless of life". State v. Dolan, 44 Wis. 2d 68 (1969); State v. Weso, 60 Wis. 2d 404 (1973).

Under prior law, adequate provocation mitigated 2nd−degree murder to manslaughter. State v. Hoyt, 21 Wis. 2d 284 (1964). Under this revision, the analogs of those crimes, i.e., first−degree reckless and 2nd−degree intentional homicide, carry the same penalty; thus mitigation is impossible. Evidence of provocation will usually be admissible in prosecutions for crimes requiring criminal recklessness, however, as relevant to the reasonableness of the risk (and, in prosecutions under this section, whether the circumstances show utter disregard for human life). Since provocation is integrated into the calculus of recklessness, it is not an affirmative defense thereto and the burdens of production and persuasion stated in s. 940.01 (3) are inapplicable. [Bill 191−S]

Possession of controlled substance is not lesser included offense of sub. (2) (a). State v. Clemons, 164 W (2d) 506, 476 NW (2d) 283 (Ct. App. 1991).

Generally expert evidence of personality dysfunction is irrelevant to the issue of intent although it might be admissible in very limited circumstances. State v. Morgan, 195 W (2d) 388, 536 NW (2d) 425 (Ct. App. 1995).

See note to 940.01, citing 1989 WLR 1323 (1989).

940.03 Felony murder. Whoever causes the death of another human being while committing or attempting to commit a crime specified in s. 940.225 (1) or (2) (a), 943.02, 943.10 (2) or 943.32 (2) may be imprisoned for not more than 20 years in excess of the maximum period of imprisonment provided by law for that crime or attempt.

History: 1987 a. 399.

Judicial Council Note, 1988: The prior felony murder statute (s. 940.02 (2)) did not allow enhanced punishment for homicides caused in the commission of a Class B felony. State v. Gordon, 111 Wis. 2d 133, 330 N.W. 2d 564 (1983). The revised statute eliminates the "natural and probable consequence" limitation and limits the offense to homicides caused in the commission of or attempt to commit armed robbery, armed burglary, arson, first degree sexual assault or 2nd degree sexual assault by use or threat of force or violence. The revised penalty clause allows imposition of up to 20 years' imprisonment more than that prescribed for the underlying felony. Prosecution and punishment for both offenses remain barred by double jeopardy. State v. Carlson, 5 Wis. 2d 595, 93 N.W. 2d 355 (1958). [Bill 191−S]

To prove the defendant caused the death, the state need only prove the defendant's conduct was a substantial factor. The phrase "while committing or attempting to commit" encompasses the immediate flight from the felony. A defendant may be convicted if another person, including an intended felony victim fires the fatal shot. State v. Oimen, 184 W (2d) 423, 516 NW (2d) 399 (Ct. App. 1994), State v. Rivera, 184 W (2d) 485, 516 NW (2d) 391 (1994) and State v. Chambers, 183 W (2d) 316, 515 NW (2d) 531 (Ct. App. 1994).

940.04 Abortion. (1) Any person, other than the mother, who intentionally destroys the life of an unborn child may be fined not more than $5,000 or imprisoned not more than 3 years or both.

(2) Any person, other than the mother, who does either of the following may be imprisoned not more than 15 years:

(a) Intentionally destroys the life of an unborn quick child; or

(b) Causes the death of the mother by an act done with intent to destroy the life of an unborn child. It is unnecessary to prove that the fetus was alive when the act so causing the mother's death was committed.

(3) Any pregnant woman who intentionally destroys the life of her unborn child or who consents to such destruction by another may be fined not more than $200 or imprisoned not more than 6 months or both.

(4) Any pregnant woman who intentionally destroys the life of her unborn quick child or who consents to such destruction by another may be imprisoned not more than 2 years.

(5) This section does not apply to a therapeutic abortion which:

(a) Is performed by a physician; and

(b) Is necessary, or is advised by 2 other physicians as necessary, to save the life of the mother; and

(c) Unless an emergency prevents, is performed in a licensed maternity hospital.

(6) In this section "unborn child" means a human being from the time of conception until it is born alive.

Aborting child against father's wishes does not constitute intentional infliction of emotional distress. Przybyla v. Przybyla, 87 W (2d) 441, 275 NW (2d) 112 (Ct. App. 1978).

Sub. (2) (a) proscribes feticide. It does not apply to consensual abortions. It was not impliedly repealed by the adoption of s. 940.15 in response to *Roe v. Wade*. State v. Black, 188 W (2d) 639, 526 NW (2d) 132 (1994).

This section cited as similar to Texas statute which was held to violate the due process clause of the 14th amendment, which protects against state action the right to privacy, including a woman's qualified right to terminate her pregnancy. Roe v. Wade, 410 US 113.

State may prohibit first trimester abortions by nonphysicians. Connecticut v. Menillo, 423 US 9.

Viability of unborn child discussed. Colautti v. Franklin, 439 US 379 (1979).

Any law requiring parental consent for minor to obtain abortion must ensure that parent does not have absolute, and possibly arbitrary, veto. Bellotti v. Baird, 443 US 622 (1979).

Poverty is not a constitutionally suspect classification. Encouraging childbirth except in the most urgent circumstances is rationally related to legitimate governmental objective of protecting potential life. Harris v. McRae, 448 US 297 (1980).

Abortion issues discussed. Akron v. Akron Center for Reproductive Health, 462 US 416 (1983).

Abortion issues discussed. Planned Parenthood Assn. v. Ashcraft, 462 US 476 (1983).

Abortion issues discussed. Simopoulas v. Virginia, 462 US 506 (1983).

Wisconsin's abortion statute (940.04, Stats. 1969) is unconstitutional as applied to the abortion of an embryo which has not quickened. Babbitz v. McCann, 310 F Supp. 293.

Where U.S. supreme court decisions clearly made Wisconsin antiabortion statute unenforceable, issue in physician's action for injunctive relief against enforcement became mooted, and it no longer presented case or controversy over which court could have jurisdiction. Larkin v. McCann, 368 F Supp. 1352.

State regulation of abortion. 1970 WLR 933.

940.05 Second−degree intentional homicide. (1) Whoever causes the death of another human being with intent to kill that person or another is guilty of a Class B felony if:

(a) In prosecutions under s. 940.01, the state fails to prove beyond a reasonable doubt that the mitigating circumstances specified in s. 940.01 (2) did not exist as required by s. 940.01 (3); or

(b) The state concedes that it is unable to prove beyond a reasonable doubt that the mitigating circumstances specified in s. 940.01 (2) did not exist. By charging under this section, the state so concedes.

(2) In prosecutions under this section, it is sufficient to allege and prove that the defendant caused the death of another human being with intent to kill that person or another.

(3) The mitigating circumstances specified in s. 940.01 (2) are not defenses to prosecution for this offense.

History: 1987 a. 399.

Judicial Council Note, 1988: Second−degree intentional homicide is analogous to the prior offense of manslaughter. The penalty is increased and the elements clarified in order to encourage charging under this section in appropriate cases.

Adequate provocation, unnecessary defensive force, prevention of felony, coercion and necessity, which are affirmative defenses to first−degree intentional homicide but not this offense, mitigate that offense to this. When this offense is charged, the state's inability to disprove their existence is conceded. Their existence need not, however, be pleaded or proved by the state in order to sustain a finding of guilty.

When first−degree intentional homicide is charged, this lesser offense must be submitted upon request if the evidence, reasonably viewed, could support the jury's finding that the state has not borne its burden of persuasion under s. 940.01 (3). State v. Felton, 110 Wis. 2d 465, 508 (1983). [Bill 191−S]

See note to 940.01 citing State v. Block, 170 W (2d) 676, 489 NW (2d) 715 (Ct. App. 1992).

See note to 940.01, citing 1989 WLR 1323 (1989).

940.06 Second−degree reckless homicide. Whoever recklessly causes the death of another human being is guilty of a Class C felony.

History: 1987 a. 399.

Judicial Council Note, 1988: Second−degree reckless homicide is analogous to the prior offense of homicide by reckless conduct. The revised statute clearly requires proof of a subjective mental state, i.e., criminal recklessness. See s. 939.24 and the NOTE thereto. [Bill 191−S]

See note to 940.01, citing 1989 WLR 1323 (1989).

940.07 Homicide resulting from negligent control of vicious animal. Whoever knowing the vicious propensities of any animal intentionally allows it to go at large or keeps it without ordinary care, if such animal, while so at large or not confined, kills any human being who has taken all the precautions which the circumstances may permit to avoid such animal, is guilty of a Class C felony.

History: 1977 c. 173.

940.08 Homicide by negligent handling of dangerous weapon, explosives or fire. Whoever causes the death of another human being by the negligent operation or handling of a dangerous weapon, explosives or fire is guilty of a Class D felony.

History: 1977 c. 173; 1985 a. 293; 1987 a. 399.

Judicial Council Note, 1988: The definition of the offense is broadened to include highly negligent handling of fire, explosives and dangerous weapons in addition to firearm, airgun, knife or bow and arrow. See s. 939.22 (10). [Bill 191−S]

High degree of negligence is determined by objective "reasonable person" test; subjective intent is not an element of the offense. Victim's contributory negligence is no defense. Hart v. State, 75 W (2d) 371, 249 NW (2d) 810.

940.09 Homicide by intoxicated use of vehicle or firearm. (1) Any person who does any of the following is guilty of a Class C felony:

(a) Causes the death of another by the operation or handling of a vehicle while under the influence of an intoxicant.

(b) Causes the death of another by the operation or handling of a vehicle while the person has a prohibited alcohol concentration, as defined in s. 340.01 (46m).

(bm) Causes the death of another by the operation of a commercial motor vehicle while the person has an alcohol concentration of 0.04 or more but less than 0.1.

(1b) If there was a minor passenger under 16 years of age in the motor vehicle at the time of the violation that gave rise to the conviction under sub. (1), any applicable maximum fine or imprisonment specified for the conviction is doubled.

(1d) If the person who committed an offense under sub. (1) (a) or (b) has 2 or more prior convictions, suspensions or revocations in a 10−year period, as counted under s. 343.307 (1), the procedure under s. 346.65 (6) may be followed regarding the immobilization or seizure and forfeiture of a motor vehicle owned by the person who committed the offense or the equipping of a motor vehicle owned by the person with an ignition interlock device.

(1g) Any person who does any of the following is guilty of a Class D felony:

(a) Causes the death of another by the operation or handling of a firearm or airgun while under the influence of an intoxicant.

(b) Causes the death of another by the operation or handling of a firearm or airgun while the person has an alcohol concentration of 0.1 or more.

(1m) A person may be charged with and a prosecutor may proceed upon an information based upon a violation of sub. (1) (a) or (b) or both or of sub. (1) (a) or (bm) or both or of sub. (1g) (a) or (b) or both for acts arising out of the same incident or occurrence. If the person is charged with violating sub. (1) (a) and (b) or both sub. (1) (a) and (bm) or both sub. (1g) (a) and (b) in the information, the crimes shall be joined under s. 971.12. If the person is found guilty of both sub. (1) (a) and (b) or of both sub. (1) (a) and (bm) or of both sub. (1g) (a) and (b) for acts arising out of the same incident or occurrence, there shall be a single conviction for purposes of sentencing and for purposes of counting convictions under s. 23.33 (13) (b) 2. and 3., under s. 30.80 (6) (a) 2. and 3., under s. 343.307 (1) or under s. 350.11 (3) (a) 2. and 3. Subsection (1) (a), (b) and (bm), and sub. (1g) (a) and (b), each require proof of a fact for conviction which the other does not require.

(2) The defendant has a defense if he or she proves by a preponderance of the evidence that the death would have occurred even if he or she had been exercising due care and he or she had not been under the influence of an intoxicant or did not have an alcohol concentration described under sub. (1) (b) or (bm) or (1g) (b).

(3) An officer who makes an arrest for a violation of this section shall make a report as required under s. 23.33 (4t), 30.686, 346.635 or 350.106.

History: 1977 c. 173; 1981 c. 20, 184, 314, 391; 1983 a. 459; 1985 a. 331; 1987 a. 399; 1989 a. 105, 275, 359; 1991 a. 32, 277; 1993 a. 317; 1995 a. 425, 436.

NOTE: For legislative intent see chapter 20, laws of 1981, section 2051 (13).

See note to art. I, sec. 11, citing State v. Jenkins, 80 W (2d) 426, 259 NW (2d) 109.

See note to art. I, sec. 11, citing State v. Bentley, 92 W (2d) 860, 286 NW (2d) 153 (Ct. App. 1979).

See note to art. I, sec. 8, citing State v. Rabe, 96 W (2d) 48, 291 NW (2d) 809 (1980).

Because driving while intoxicated is inherently dangerous, state need not prove causal connection between driver's intoxication and victim's death. Sub. (2) does not violate right against self−incrimination. State v. Caibaiosai, 122 W (2d) 587, 363 NW (2d) 574 (1985).

Where state impounded vehicle but released it to scrap dealer before defendant's expert could examine it, charge was properly dismissed for destruction of exculpatory evidence. State v. Hahn, 132 W (2d) 351, 392 NW (2d) 464 (Ct. App. 1986).

A vehicle under this section is defined in s. 939.44 (2) and includes a tractor. State v. Sohn, 193 W (2d) 346, 535 NW (2d) 1 (Ct. App. 1995).

Sub. (2) does not violate the constitutional guarantee of equal protection. State v. Lohmeier, 196 W (2d) 432, 538 NW (2d) 821 (Ct. App. 1995).

This statute doesn't violate due process. Caibaiosai v. Barrington, 643 F Supp. 1007 (W. D. Wis. 1986).

Homicide By Intoxicated Use Statute. Sines. Wis. Law. April, 1995.

940.10 Homicide by negligent operation of vehicle. Whoever causes the death of another human being by the negligent operation or handling of a vehicle is guilty of a Class E felony.

History: 1987 a. 399.

Judicial Council Note, 1988 Homicide by negligent operation of vehicle is analogous to prior s. 940.08. The mental element is criminal negligence as defined in s. 939.25. [Bill 191−S]

Motorist was properly convicted under this section for running red light at 50 m.p.h., even though speed limit was 55 m.p.h. State v. Cooper, 117 W (2d) 30, 344 NW (2d) 194 (Ct. App. 1983).

The definition of criminal negligence as applied to homicide by negligent operation of a vehicle is not unconstitutionally vague. State v. Barman, 183 W (2d) 180, 515 NW (2d) 493 (Ct. App. 1994).

A corporation may be subject to criminal liability under this section. State v. Knutson, Inc. 196 W (2d) 86, 537 NW (2d) 420 (Ct. App. 1995).

940.11 Mutilating or hiding a corpse. (1) Whoever mutilates, disfigures or dismembers a corpse, with intent to conceal a crime or avoid apprehension, prosecution or conviction for a crime, is guilty of a Class C felony.

(2) Whoever hides or buries a corpse, with intent to conceal a crime or avoid apprehension, prosecution or conviction for a crime, is guilty of a Class D felony.

(3) A person may not be subject to prosecution under both this section and s. 946.47 for his or her acts regarding the same corpse.

History: 1991 a. 205.

940.12 Assisting suicide. Whoever with intent that another take his or her own life assists such person to commit suicide is guilty of a Class D felony.

History: 1977 c. 173.

940.13 Abortion exception. No fine or imprisonment may be imposed or enforced against and no prosecution may be brought against a woman who obtains an abortion or otherwise violates any provision of any abortion statute with respect to her unborn child or fetus, and s. 939.05, 939.30 or 939.31 does not apply to a woman who obtains an abortion or otherwise violates any provision of any abortion statute with respect to her unborn child or fetus.

History: 1985 a. 56.

940.15 Abortion. (1) In this section, "viability" means that stage of fetal development when, in the medical judgment of the attending physician based on the particular facts of the case before him or her, there is a reasonable likelihood of sustained survival of the fetus outside the womb, with or without artificial support.

(2) Whoever intentionally performs an abortion after the fetus or unborn child reaches viability, as determined by reasonable medical judgment of the woman's attending physician, is guilty of a Class E felony.

(3) Subsection (2) does not apply if the abortion is necessary to preserve the life or health of the woman, as determined by reasonable medical judgment of the woman's attending physician.

(4) Any abortion performed under sub. (3) after viability of the fetus or unborn child, as determined by reasonable medical judgment of the woman's attending physician, shall be performed in a hospital on an inpatient basis.

(5) Whoever intentionally performs an abortion and who is not a physician is guilty of a Class E felony.

(6) Any physician who intentionally performs an abortion under sub. (3) shall use that method of abortion which, of those he or she knows to be available, is in his or her medical judgment most likely to preserve the life and health of the fetus or unborn child. Nothing in this subsection requires a physician performing an abortion to employ a method of abortion which, in his or her medical judgment based on the particular facts of the case before him or her, would increase the risk to the woman. Any physician violating this subsection is guilty of a Class E felony.

(7) Subsections (2) to (6) and s. 939.05, 939.30 or 939.31 do not apply to a woman who obtains an abortion that is in violation of this section or otherwise violates this section with respect to her unborn child or fetus.

History: 1985 a. 56.

BODILY SECURITY.

940.19 Battery; substantial battery; aggravated battery. (1) Whoever causes bodily harm to another by an act done with intent to cause bodily harm to that person or another without the consent of the person so harmed is guilty of a Class A misdemeanor.

(2) Whoever causes substantial bodily harm to another by an act done with intent to cause bodily harm to that person or another is guilty of a Class E felony.

(3) Whoever causes substantial bodily harm to another by an act done with intent to cause substantial bodily harm to that person or another is guilty of a Class D felony.

(4) Whoever causes great bodily harm to another by an act done with intent to cause bodily harm to that person or another is guilty of a Class D felony.

(5) Whoever causes great bodily harm to another by an act done with intent to cause either substantial bodily harm or great bodily harm to that person or another is guilty of a Class C felony.

(6) Whoever intentionally causes bodily harm to another by conduct that creates a substantial risk of great bodily harm is guilty of a Class D felony. A rebuttable presumption of conduct creating a substantial risk of great bodily harm arises:

(a) If the person harmed is 62 years of age or older; or

(b) If the person harmed has a physical disability, whether congenital or acquired by accident, injury or disease, that is discernible by an ordinary person viewing the physically disabled person, or that is actually known by the actor.

History: 1977 c. 173; 1979 c. 111, 113; 1987 a. 399; 1993 a. 441, 483.

Under "elements only" test, offenses under subsections that require proof of nonconsent are not lesser included offenses of offenses under subsections where proof of nonconsent is not required. State v. Richards, 123 W (2d) 1, 365 NW (2d) 7 (1985).

"Physical disability" under (former) sub. (3) (now sub. (6)) discussed. State v. Crowley, 143 W (2d) 324, 422 NW (2d) 847 (1988).

First−degree reckless injury, s. 940.23 (1), is not a lesser included offense of aggravated battery. State v. Eastman, 185 W (2d) 405, 518 NW (2d) 257 (Ct. App. 1994).

940.20 Battery: special circumstances. (1) BATTERY BY PRISONERS. Any prisoner confined to a state prison or other state, county or municipal detention facility who intentionally causes bodily harm to an officer, employe, visitor or another inmate of such prison or institution, without his or her consent, is guilty of a Class D felony.

(1m) BATTERY BY PERSONS SUBJECT TO CERTAIN INJUNCTIONS. (a) Any person who is subject to an injunction under s. 813.12 or a tribal injunction filed under [s. 813.12 (9) (a)] and who intentionally causes bodily harm to the petitioner who sought the injunction by an act done without the consent of the petitioner is guilty of a Class E felony.

NOTE: The bracketed cross−reference does not exist. 1995 Wis. Act 343 created this provision without taking into account the repeal and recreation of s. 813.12 (9) by 1995 Wis. Act 306.

(b) Any person who is subject to an injunction under s. 813.125 and who intentionally causes bodily harm to the petitioner who sought the injunction by an act done without the consent of the petitioner is guilty of a Class E felony.

(2) BATTERY TO LAW ENFORCEMENT OFFICERS AND FIRE FIGHTERS. Whoever intentionally causes bodily harm to a law enforcement officer or fire fighter, as those terms are defined in s. 102.475 (8) (b) and (c), acting in an official capacity and the person knows or has reason to know that the victim is a law enforcement officer or fire fighter, by an act done without the consent of the person so injured, is guilty of a Class D felony.

(2m) BATTERY TO PROBATION AND PAROLE AGENTS AND AFTERCARE AGENTS. (a) In this subsection:

1. "Aftercare agent" means any person authorized by the department of corrections to exercise control over a juvenile on aftercare.

2. "Probation and parole agent" means any person authorized by the department of corrections to exercise control over a probationer or parolee.

(b) Whoever intentionally causes bodily harm to a probation and parole agent or an aftercare agent, acting in an official capacity and the person knows or has reason to know that the victim is a probation and parole agent or an aftercare agent, by an act done without the consent of the person so injured, is guilty of a Class D felony.

(3) BATTERY TO WITNESSES AND JURORS. Whoever intentionally causes bodily harm to a person who he or she knows or has reason to know is or was a witness as defined in s. 940.41 (3) or a grand or petit juror, and by reason of the person having attended or testified as a witness or by reason of any verdict or indictment assented to by the person, without the consent of the person injured, is guilty of a Class D felony.

(4) BATTERY TO PUBLIC OFFICERS. Whoever intentionally causes bodily harm to a public officer in order to influence the action of such officer or as a result of any action taken within an official capacity, without the consent of the person injured, is guilty of a Class E felony.

(5) BATTERY TO TECHNICAL COLLEGE DISTRICT OR SCHOOL DISTRICT OFFICERS AND EMPLOYES. (a) In this subsection:

1. "School district" has the meaning given in s. 115.01 (3).

2. "Technical college district" means a district established under ch. 38.

(b) Whoever intentionally causes bodily harm to a technical college district or school district officer or employe acting in that capacity, and the person knows or has reason to know that the victim is a technical college district or school district officer or employe, without the consent of the person so injured, is guilty of a Class E felony.

(6) BATTERY TO PUBLIC TRANSIT VEHICLE OPERATOR, DRIVER OR PASSENGER. (a) In this subsection, "public transit vehicle" means any vehicle used for providing transportation service to the general public.

(b) Whoever intentionally causes bodily harm to another under any of the following circumstances is guilty of a Class E felony:

1. The harm occurs while the victim is an operator, a driver or a passenger of, in or on a public transit vehicle.

2. The harm occurs after the offender forces or directs the victim to leave a public transit vehicle.

3. The harm occurs as the offender prevents, or attempts to prevent, the victim from gaining lawful access to a public transit vehicle.

(7) (a) In this subsection:

1e. "Ambulance" has the meaning given in s. 146.50 (1) (a).

1g. "Emergency department" means a room or area in a hospital, as defined in s. 50.33 (2), that is primarily used to provide emergency care, diagnosis or radiological treatment.

2. "Emergency department worker" means any of the following:

a. An employe of a hospital who works in an emergency department.

b. A health care provider, whether or not employed by a hospital, who works in an emergency department.

2g. "Emergency medical technician" has the meaning given in s. 146.50 (1) (e).

2m. "First responder" has the meaning given in s. 146.53 (1) (d).

3. "Health care provider" means any person who is licensed, registered, permitted or certified by the department of health and family services or the department of regulation and licensing to provide health care services in this state.

(b) Whoever intentionally causes bodily harm to an emergency department worker, an emergency medical technician, a first responder or an ambulance driver who is acting in an official capacity and who the person knows or has reason to know is an emergency department worker, an emergency medical technician, a first responder or an ambulance driver, by an act done without the consent of the person so injured, is guilty of a Class D felony.

History: 1977 c. 173; 1979 c. 30, 113, 221; 1981 c. 118 s. 9; 1983 a. 189 s. 329 (4); 1989 a. 336; 1993 a. 54, 164, 491; 1995 a. 27 s. 9126 (19); 1995 a. 77, 145, 225, 343.

Resisting or obstructing an officer (946.41) is not a lesser−included crime of battery to a peace officer. State v. Zdiarstek, 53 W (2d) 776, 193 NW (2d) 833.

Battery to prospective witness is prohibited by s. 940.206, 1975 stats. [now s. 940.20 (3)]. McLeod v. State, 85 W (2d) 787, 271 NW (2d) 157 (Ct. App. 1978).

County deputy sheriff was not acting in official capacity under s. 940.205, 1975 stats. [now s. 940.20 (2)] when making arrest outside county of employment. State v. Barrett, 96 W (2d) 174, 291 NW (2d) 498 (1980).

See note to 48.34, citing In Interest of C.D.M. 125 W (2d) 170, 370 NW (2d) 287 (Ct. App. 1985).

Prisoner is confined to state prison under (1) when kept under guard at hospital for treatment. State v. Cummings, 153 W (2d) 603, 451 NW (2d) 463 (Ct. App. 1989).

Defendant's commitment to a mental institution upon a finding of not guilty by reason of mental disease or defect rendered him a "prisoner" under sub. (1). State v. Skamfer, 176 W (2d) 304, NW (2d) (Ct. App. 1993).

940.203 Battery or threat to judge. (1) In this section:

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

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

(2) Whoever intentionally causes bodily harm or threatens to cause bodily harm to the person or family member of any judge under all of the following circumstances is guilty of a Class D felony:

(a) At the time of the act or threat, the actor knows or should have known that the victim 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 harmed or threatened.

History: 1993 a. 50, 446.

940.205 Battery or threat to department of revenue employe. (1) In this section, "family member" means a parent, spouse, sibling, child, stepchild, foster child or treatment foster child.

(2) Whoever intentionally causes bodily harm or threatens to cause bodily harm to the person or family member of any department of revenue official, employe or agent under all of the following circumstances is guilty of a Class D felony:

(a) At the time of the act or threat, the actor knows or should have known that the victim is a department of revenue official, employe or agent or a member of his or her family.

(b) The official, employe 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 harmed or threatened.

History: 1985 a. 29; 1993 a. 446.

940.207 Battery or threat to department of commerce or department of industry, labor and job development employe. (1) In this section, "family member" means a parent, spouse, sibling, child, stepchild, foster child or treatment foster child.

(2) Whoever intentionally causes bodily harm or threatens to cause bodily harm to the person or family member of any department of commerce or department of industry, labor and job development official, employe or agent under all of the following circumstances is guilty of a Class D felony:

(a) At the time of the act or threat, the actor knows or should have known that the victim is a department of commerce or department of industry, labor and job development official, employe or agent or a member of his or her family.

(b) The official, employe 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 harmed or threatened.

History: 1993 a. 86, 446; 1995 a. 27 ss. 7227 to 7229, 9116 (5), 9130 (4).

940.21 Mayhem. Whoever, with intent to disable or disfigure another, cuts or mutilates the tongue, eye, ear, nose, lip, limb or other bodily member of another, is guilty of a Class B felony.

History: 1977 c. 173.

Injury by conduct regardless of life (940.23) and endangering safety by conduct regardless of life (941.30) can be lesser included offenses of mayhem. Kirby v. State, 86 W (2d) 292, 272 NW (2d) 113 (Ct. App. 1978).

Failure to instruct jury that great bodily harm is essential element of mayhem was reversible error. Cole v. Young, 817 F (2d) 412 (7th Cir. 1987).

940.22 Sexual exploitation by therapist; duty to report. (1) DEFINITIONS. In this section:

(a) "Department" means the department of regulation and licensing.

(b) "Physician" has the meaning designated in s. 448.01 (5).

(c) "Psychologist" means a person who practices psychology, as described in s. 455.01 (5).

(d) "Psychotherapy" has the meaning designated in s. 455.01 (6).

(e) "Record" means any document relating to the investigation, assessment and disposition of a report under this section.

(f) "Reporter" means a therapist who reports suspected sexual contact between his or her patient or client and another therapist.

(g) "Sexual contact" has the meaning designated in s. 940.225 (5) (b).

(h) "Subject" means the therapist named in a report or record as being suspected of having sexual contact with a patient or client or who has been determined to have engaged in sexual contact with a patient or client.

(i) "Therapist" means a physician, psychologist, social worker, marriage and family therapist, professional counselor, nurse, chemical dependency counselor, member of the clergy or

other person, whether or not licensed or certified by the state, who performs or purports to perform psychotherapy.

(2) SEXUAL CONTACT PROHIBITED. Any person who is or who holds himself or herself out to be a therapist and who intentionally has sexual contact with a patient or client during any ongoing therapist−patient or therapist−client relationship, regardless of whether it occurs during any treatment, consultation, interview or examination, is guilty of a Class C felony. Consent is not an issue in an action under this subsection.

(3) REPORTS OF SEXUAL CONTACT. (a) If a therapist has reasonable cause to suspect that a patient or client he or she has seen in the course of professional duties is a victim of sexual contact by another therapist or a person who holds himself or herself out to be a therapist in violation of sub. (2), as soon thereafter as practicable the therapist shall ask the patient or client if he or she wants the therapist to make a report under this subsection. The therapist shall explain that the report need not identify the patient or client as the victim. If the patient or client wants the therapist to make the report, the patient or client shall provide the therapist with a written consent to the report and shall specify whether the patient's or client's identity will be included in the report.

(b) Within 30 days after a patient or client consents under par. (a) to a report, the therapist shall report the suspicion to:

1. The department, if the reporter believes the subject of the report is licensed by the state. The department shall promptly communicate the information to the appropriate examining board or affiliated credentialing board.

2. The district attorney for the county in which the sexual contact is likely, in the opinion of the reporter, to have occurred, if subd. 1. is not applicable.

(c) A report under this subsection shall contain only information that is necessary to identify the reporter and subject and to express the suspicion that sexual contact has occurred in violation of sub. (2). The report shall not contain information as to the identity of the alleged victim of sexual contact unless the patient or client requests under par. (a) that this information be included.

(d) Whoever intentionally violates this subsection by failing to report as required under pars. (a) to (c) is guilty of a Class A misdemeanor.

(4) CONFIDENTIALITY OF REPORTS AND RECORDS. (a) All reports and records made from reports under sub. (3) and maintained by the department, examining boards, affiliated credentialing boards, district attorneys and other persons, officials and institutions shall be confidential and are exempt from disclosure under s. 19.35 (1). Information regarding the identity of a victim or alleged victim of sexual contact by a therapist shall not be disclosed by a reporter or by persons who have received or have access to a report or record unless disclosure is consented to in writing by the victim or alleged victim. The report of information under sub. (3) and the disclosure of a report or record under this subsection does not violate any person's responsibility for maintaining the confidentiality of patient health care records, as defined in s. 146.81 (4) and as required under s. 146.82. Reports and records may be disclosed only to appropriate staff of a district attorney or a law enforcement agency within this state for purposes of investigation or prosecution.

(b) 1. The department, a district attorney, an examining board or an affiliated credentialing board within this state may exchange information from a report or record on the same subject.

2. If the department receives 2 or more reports under sub. (3) regarding the same subject, the department shall communicate information from the reports to the appropriate district attorneys and may inform the applicable reporters that another report has been received regarding the same subject.

3. If a district attorney receives 2 or more reports under sub. (3) regarding the same subject, the district attorney may inform the applicable reporters that another report has been received regarding the same subject.

4. After reporters receive the information under subd. 2. or 3., they may inform the applicable patients or clients that another report was received regarding the same subject.

(c) A person to whom a report or record is disclosed under this subsection may not further disclose it, except to the persons and for the purposes specified in this section.

(d) Whoever intentionally violates this subsection, or permits or encourages the unauthorized dissemination or use of information contained in reports and records made under this section, is guilty of a Class A misdemeanor.

(5) IMMUNITY FROM LIABILITY. Any person or institution participating in good faith in the making of a report or record under this section is immune from any civil or criminal liability that results by reason of the action. For the purpose of any civil or criminal action or proceeding, any person reporting under this section is presumed to be acting in good faith. The immunity provided under this subsection does not apply to liability resulting from sexual contact by a therapist with a patient or client.

History: 1983 a. 434; 1985 a. 275; 1987 a. 352, 380; 1991 a. 160; 1993 a. 107; 1995 a. 300.

This section applies to persons engaged in a professional therapist−patient relationship. A teacher who conducts informal counseling is not engaged as a professional therapist. State v. Ambrose, 196 W (2d) 768, 540 NW (2d) 208 (Ct. App. 1995).

940.225 Sexual assault. (1) FIRST DEGREE SEXUAL ASSAULT. Whoever does any of the following is guilty of a Class B felony:

(a) Has sexual contact or sexual intercourse with another person without consent of that person and causes pregnancy or great bodily harm to that person.

(b) Has sexual contact or sexual intercourse with another person without consent of that person by use or threat of use of a dangerous weapon or any article used or fashioned in a manner to lead the victim reasonably to believe it to be a dangerous weapon.

(c) Is aided or abetted by one or more other persons and has sexual contact or sexual intercourse with another person without consent of that person by use or threat of force or violence.

(2) SECOND DEGREE SEXUAL ASSAULT. Whoever does any of the following is guilty of a Class BC felony:

(a) Has sexual contact or sexual intercourse with another person without consent of that person by use or threat of force or violence.

(b) Has sexual contact or sexual intercourse with another person without consent of that person and causes injury, illness, disease or impairment of a sexual or reproductive organ, or mental anguish requiring psychiatric care for the victim.

(c) Has sexual contact or sexual intercourse with a person who suffers from a mental illness or deficiency which renders that person temporarily or permanently incapable of appraising the person's conduct, and the defendant knows of such condition.

(d) Has sexual contact or sexual intercourse with a person who the defendant knows is unconscious.

(f) Is aided or abetted by one or more other persons and has sexual contact or sexual intercourse with another person without the consent of that person.

(g) Is an employe of a facility or program under s. 940.295 (2) (b), (c), (h) or (k) and has sexual contact or sexual intercourse with a person who is a patient or resident of the facility or program.

(3) THIRD DEGREE SEXUAL ASSAULT. Whoever has sexual intercourse with a person without the consent of that person is guilty of a Class D felony. Whoever has sexual contact in the manner described in sub. (5) (b) 2. with a person without the consent of that person is guilty of a Class D felony.

(3m) FOURTH DEGREE SEXUAL ASSAULT. Except as provided in sub. (3), whoever has sexual contact with a person without the consent of that person is guilty of a Class A misdemeanor.

(4) CONSENT. "Consent", as used in this section, means words or overt actions by a person who is competent to give informed consent indicating a freely given agreement to have sexual inter-

course or sexual contact. Consent is not an issue in alleged violations of sub. (2) (c), (d) and (g). The following persons are presumed incapable of consent but the presumption may be rebutted by competent evidence, subject to the provisions of s. 972.11 (2):

(b) A person suffering from a mental illness or defect which impairs capacity to appraise personal conduct.

(c) A person who is unconscious or for any other reason is physically unable to communicate unwillingness to an act.

(5) DEFINITIONS. In this section:

(ag) "Inpatient facility" has the meaning designated in s. 51.01 (10).

(am) "Patient" means any person who does any of the following:

1. Receives care or treatment from a facility or program under s. 940.295 (2) (b), (c), (h) or (k), from an employe of a facility or program or from a person providing services under contract with a facility or program.

2. Arrives at a facility or program under s. 940.295 (2) (b), (c), (h) or (k) for the purpose of receiving care or treatment from a facility or program under s. 940.295 (2) (b), (c), (h) or (k), from an employe of a facility or program under s. 940.295 (2) (b), (c), (h) or (k), or from a person providing services under contract with a facility or program under s. 940.295 (2) (b), (c), (h) or (k).

(ar) "Resident" means any person who resides in a facility under s. 940.295 (2) (b), (c), (h) or (k).

(b) "Sexual contact" means any of the following:

1. Intentional touching by the complainant or defendant, either directly or through clothing by the use of any body part or object, of the complainant's or defendant's intimate parts if that intentional touching is either for the purpose of sexually degrading; or for the purpose of sexually humiliating the complainant or sexually arousing or gratifying the defendant or if the touching contains the elements of actual or attempted battery under s. 940.19 (1).

2. Intentional penile ejaculation of ejaculate or intentional emission of urine or feces by the defendant upon any part of the body clothed or unclothed of the complainant if that ejaculation or emission is either for the purpose of sexually degrading or sexually humiliating the complainant or for the purpose of sexually arousing or gratifying the defendant.

(c) "Sexual intercourse" includes the meaning assigned under s. 939.22 (36) as well as cunnilingus, fellatio or anal intercourse between persons or any other intrusion, however slight, of any part of a person's body or of any object into the genital or anal opening either by the defendant or upon the defendant's instruction. The emission of semen is not required.

(d) "State treatment facility" has the meaning designated in s. 51.01 (15).

(6) MARRIAGE NOT A BAR TO PROSECUTION. A defendant shall not be presumed to be incapable of violating this section because of marriage to the complainant.

(7) DEATH OF VICTIM. This section applies whether a victim is dead or alive at the time of the sexual contact or sexual intercourse.

History: 1975 c. 184, 421; 1977 c. 173; 1979 c. 24, 25, 175, 221; 1981 c. 89, 308, 309, 310, 311; 1985 a. 134; 1987 a. 245, 332, 352; 1987 a. 403 ss. 235, 236, 256; 1993 a. 445; 1995 a. 69.

Legislative Council Note, 1981: Presently, [in sub. (5) (a)] the definition of "sexual intercourse" in the sexual assault statute includes any intrusion of any part of a person's body or of any object into the genital or anal opening of another person. This proposal clarifies that the intrusion of the body part or object may be caused by the direct act of the offender (defendant) or may occur as a result of an act by the victim which is done in compliance with instructions of the offender (defendant). [Bill 630−S]

Failure to resist is not consent under (4). State v. Clark, 87 W (2d) 804, 275 NW (2d) 715 (1979).

Injury by conduct regardless of life is not a lesser−included crime of first−degree sexual assault. Hagenkord v. State, 94 W (2d) 250, 287 NW (2d) 834 (Ct. App. 1979).

Multiplicitous sexual assault charges discussed. State v. Eisch, 96 W (2d) 25, 291 NW (2d) 800 (1980).

Trial court did not err in denying accused's motions to compel psychiatric examination of victim and to discover victim's past addresses. State v. Lederer, 99 W (2d) 430, 299 NW (2d) 457 (Ct. App. 1980).

See note to Art. I, sec. 5, citing State v. Baldwin, 101 W (2d) 441, 304 NW (2d) 742 (1981).

Age classifications under this section may be open to question. State v. Cuyler, 110 W (2d) 133, 327 NW (2d) 662 (1983).

See note to Art. I, sec. 5, citing State v. Lomagro, 113 W (2d) 582, 335 NW (2d) 583 (1983).

Jury instruction that touching "vaginal area" constituted sexual contact was correct. State v. Morse, 126 W (2d) 1, 374 NW (2d) 388 (Ct. App. 1985).

"Unconscious" as used in (2) (d) is a loss of awareness which may be caused by sleep. State v. Curtis, 144 W (2d) 691, 424 NW (2d) 719 (Ct. App. 1988).

See note to 904.01, citing State v. Hartman, 145 W (2d) 1, 426 NW (2d) 320 (1988).

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

Attempted fourth−degree sexual assault is not offense under Wisconsin law. State v. Cvorovic, 158 W (2d) 630, 462 NW (2d) 897 (Ct. App. 1990).

Discussion of "use or threat of force or violence" under (2) (a). State v. Bonds, 165 W (2d) 27, 477 NW (2d) 265 (1991).

Dog may be dangerous weapon under (1) (b). State v. Sinks, 168 W (2d) 245, 483 NW (2d) 286 (Ct. App. 1992).

Convictions under both (1) (d) and (2) (d) did not violate double jeopardy. State v. Sauceda, 168 W (2d) 486, 485 NW (2d) 1 (1992).

Sub. (2) (d) is not unconstitutionally vague. Expert evidence regarding sleep based solely on a hypothetical situation similar but not identical to the facts of the case was inadmissible. State v. Pittman, 174 W (2d) 255, 496 NW (2d) 74 (1993), 445.

Convictions under both subs. (2) (a) and (2) (e) did not violate double jeopardy. State v. Selmon, 175 W (2d) 155, 877 NW (2d) 498 (Ct. App. 1993).

Discussion of relevant evidence in child sexual assault case. In Interest of Michael R.B. 175 W (2d) 713, 499 NW (2d) 641 (1993).

"Great bodily harm" is a distinct element under sub. (1) (a) and need not be caused by the sexual act. State v. Schambow, 176 W (2d) 286, NW (2d) (Ct. App. 1993).

Intent is not an element of sub. (2) (a); lack of intent element does not render this provision constitutionally invalid. State v. Neumann, 179 W (2d) 687, 508 NW (2d) 54 (Ct. App. 1993).

Previous use of force, and victim's resulting fear, was an appropriate basis for finding that a threat of force existed under sub. (2) (a). State v. Speese, 191 W (2d) 205, 528 NW (2d) 63 (Ct. App. 1995).

Violation of any of the provisions of this section does not immunize the defendant from violating the same or another provision in the course of sexual misconduct. Two acts of vaginal intercourse are sufficiently different in fact to justify separate charges under sub. (1) (d). State v. Kruzycki, 192 W (2d) 509, 531 NW (2d) 429 (Ct. App. 1995).

A defendant need not be informed of the potential of a ch. 980 commitment for a guilty plea to a sexual assault charge to be knowingly made as the commitment is a collateral and not direct consequence of the plea. State v. Myers, 199 W (2d) 391, 544 NW (2d) 609 (Ct. App. 1996).

Conviction on 2 counts of rape, where offenses occurred 25 minutes apart in same location, did not violate double jeopardy provisions of U.S. Constitution. Harrell v. Israel, 478 F Supp. 752 (1979).

Conviction for attempted first degree sexual assault based on circumstantial evidence did not deny due process. Upshaw v. Powell, 478 F Supp. 1264 (1979).

940.23 Reckless injury. (1) FIRST−DEGREE RECKLESS INJURY. Whoever recklessly causes great bodily harm to another human being under circumstances which show utter disregard for human life is guilty of a Class C felony.

(2) SECOND−DEGREE RECKLESS INJURY. Whoever recklessly causes great bodily harm to another human being is guilty of a Class D felony.

History: 1987 a. 399.

Judicial Council Note, 1988: Sub. (1) is analogous to the prior offense of injury by conduct regardless of life.

Sub. (2) is new. It creates the crime of injury by criminal recklessness. See s. 939.24. [Bill 191−S]

First−degree reckless injury, s. 940.23 (1), is not a lesser included offense of aggravated battery. State v. Eastman, 185 W (2d) 405, 518 NW (2d) 257 (Ct. App. 1994).

940.24 Injury by negligent handling of dangerous weapon, explosives or fire. Whoever causes bodily harm to another by the negligent operation or handling of a dangerous weapon, explosives or fire is guilty of a Class E felony.

History: 1977 c. 173; 1987 a. 399.

Judicial Council Note, 1988: The definition of the offense is broadened to include highly negligent handling of fire, explosives and dangerous weapons other than a firearm, airgun, knife or bow and arrow. See s. 939.22 (10). The culpable mental state is criminal negligence. See s. 939.25 and the NOTE thereto. [Bill 191−S]

940.25 Injury by intoxicated use of a vehicle. (1) Any person who does any of the following is guilty of a Class D felony:

(a) Causes great bodily harm to another human being by the operation of a vehicle while under the influence of an intoxicant.

(b) Causes great bodily harm to another human being by the operation of a vehicle while the person has a prohibited alcohol concentration, as defined in s. 340.01 (46m).

(bm) Causes great bodily harm to another human being by the operation of a commercial motor vehicle while the person has an alcohol concentration of 0.04 or more but less than 0.1.

(1b) If there was a minor passenger under 16 years of age in the motor vehicle at the time of the violation that gave rise to the conviction under sub. (1), any applicable maximum fine or imprisonment specified for the conviction is doubled.

(1d) If the person who committed the offense under sub. (1) (a) or (b) has 2 or more prior convictions, suspensions or revocations in a 10−year period, as counted under s. 343.307 (1), the procedure under s. 346.65 (6) may be followed regarding the immobilization or seizure and forfeiture of a motor vehicle owned by the person who committed the offense or the equipping of a motor vehicle owned by the person with an ignition interlock device.

(1m) A person may be charged with and a prosecutor may proceed upon an information based upon a violation of sub. (1) (a) or (b) or both or of sub. (1) (a) or (bm) or both for acts arising out of the same incident or occurrence. If the person is charged with violating both sub. (1) (a) and (b) or both sub. (1) (a) and (bm) in the information, the crimes shall be joined under s. 971.12. If the person is found guilty of both sub. (1) (a) and (b) or of sub. (1) (a) and (bm) for acts arising out of the same incident or occurrence, there shall be a single conviction for purposes of sentencing and for purposes of counting convictions under s. 23.33 (13) (b) 2. and 3., under s. 30.80 (6) (a) 2. or 3., under ss. 343.30 (1q) and 343.305 or under s. 350.11 (3) (a) 2. and 3. Subsection (1) (a), (b) and (bm) each require proof of a fact for conviction which the other does not require.

(2) The defendant has a defense if he or she proves by a preponderance of the evidence that the great bodily harm would have occurred even if he or she had been exercising due care and he or she had not been under the influence of an intoxicant or did not have an alcohol concentration described under sub. (1) (b) or (bm).

(3) An officer who makes an arrest for a violation of this section shall make a report as required under s. 23.33 (4t), 30.686, 346.635 or 350.106.

History: 1977 c. 193, 272; 1981 c. 20, 184; 1983 a. 459; 1985 a. 331; 1987 a. 399; 1989 a. 105, 275, 359; 1991 a. 277; 1993 a. 317, 428, 478; 1995 a. 425, 436.

NOTE: For legislative intent see chapter 20, laws of 1981, section 2051 (13).

Double jeopardy clause was not violated by charge under sub. (1) (c), 1987 stats. [now sub. (1m)] of violations of subs. (1) (a) and (b). State v. Bohacheff, 114 W (2d) 402, 338 NW (2d) 466 (1983).

Trial court did not err in refusing to admit expert testimony indicating that victims would not have suffered same injury had they been wearing seat belts; evidence not relevant to defense under (2). State v. Turk, 154 W (2d) 294, 453 NW (2d) 163 (1990).

940.285 Abuse of vulnerable adults.

(1) DEFINITIONS. In this section:

(a) "Developmentally disabled person" has the meaning specified in s. 55.01 (2).

(b) "Infirmities of aging" has the meaning specified in s. 55.01 (3).

(bm) "Maltreatment" includes any of the following conduct:

1. Conduct that causes or could reasonably be expected to cause bodily harm or great bodily harm.

2. Restraint, isolation or confinement that causes or could reasonably be expected to cause bodily harm or great bodily harm or mental or emotional damage, including harm to the vulnerable adult's psychological or intellectual functioning that is exhibited by severe anxiety, depression, withdrawal, regression or outward aggressive behavior or a combination of these behaviors. This subdivision does not apply to restraint, isolation or confinement by order of a court or other lawful authority.

3. Deprivation of a basic need for food, shelter, clothing or personal or health care, including deprivation resulting from the failure to provide or arrange for a basic need by a person who has assumed responsibility for meeting the need voluntarily or by contract, agreement or court order.

(c) "Mental illness" has the meaning specified in s. 55.01 (4m).

(d) "Other like incapacities" has the meaning specified in s. 55.01 (5).

(dm) "Recklessly" means conduct that creates a situation of unreasonable risk of harm and demonstrates a conscious disregard for the safety of the vulnerable adult.

(e) "Vulnerable adult" means any person 18 years of age or older who either is a developmentally disabled person or has infirmities of aging, mental illness or other like incapacities and who is:

1. Substantially mentally incapable of providing for his or her needs for food, shelter, clothing or personal or health care; or

2. Unable to report cruel maltreatment without assistance.

(2) MALTREATMENT; PENALTIES. (a) Any person, other than a person in charge of or employed in a facility under s. 940.29 or in a facility or program under s. 940.295 (2), who does any of the following may be penalized under par. (b):

1. Intentionally subjects a vulnerable adult to maltreatment.

2. Recklessly subjects a vulnerable adult to maltreatment.

(b) 1. Any person violating par. (a) 1. under circumstances that cause or are likely to cause great bodily harm is guilty of a Class D felony.

2. Any person violating par. (a) 1. under circumstances that cause or are likely to cause bodily harm is guilty of a Class E felony.

3. Any person violating par. (a) 2. under circumstances that cause or are likely to cause great bodily harm is guilty of a Class E felony.

4. Any person violating par. (a) 2. under circumstances that cause or are likely to cause bodily harm is guilty of a Class A misdemeanor.

5. Any person violating par. (a) 1. or 2. under circumstances not causing and not likely to cause bodily harm is guilty of a Class B misdemeanor.

History: 1985 a. 306; 1993 a. 445.

940.29 Abuse of residents of penal facilities.

Any person in charge of or employed in a penal or correctional institution or other place of confinement who abuses, neglects or ill−treats any person confined in or a resident of any such institution or place or who knowingly permits another person to do so is guilty of a Class E felony.

History: 1975 c. 119; 1975 c. 413 s. 18; 1977 c. 173; 1979 c. 124; 1981 c. 20; 1987 a. 161 ss. 12, 13m; 1987 a. 332; 1993 a. 445.

940.291 Law enforcement officer; failure to render aid.

(1) Any peace officer, while acting in the course of employment or under the authority of employment, who intentionally fails to render or make arrangements for any necessary first aid for any person in his or her actual custody is guilty of a Class A misdemeanor if bodily harm results from the failure. This subsection applies whether the custody is lawful or unlawful and whether the custody is actual or constructive. A violation for intentionally failing to render first aid under this subsection applies only to first aid which the officer has the knowledge and ability to render.

(2) Any peace officer who knowingly permits another person to violate sub. (1), while acting in the course of employment or under the authority of employment, is guilty of a Class A misdemeanor.

History: 1983 a. 27.

940.295 Abuse and neglect of patients and residents.

(1) DEFINITIONS. In this section:

(a) "Adult family home" has the meaning given in s. 50.01 (1).

(b) "Bodily harm" has the meaning given in s. 939.22 (4).

(c) "Community−based residential facility" has the meaning given in s. 50.01 (1g).

(d) "Foster home" has the meaning given in s. 48.02 (6).

(e) "Great bodily harm" has the meaning given in s. 939.22 (14).

(f) "Group home" has the meaning given in s. 48.02 (7).

(g) "Home health agency" has the meaning given in s. 50.49 (1) (a).

(h) "Hospice" has the meaning given in s. 50.90 (1).

(i) "Inpatient health care facility" has the meaning given in s. 50.135 (1).

(j) "Intentional abuse" means any of the following, if done intentionally:

1. An act, omission or course of conduct by another that is not reasonably necessary for treatment or maintenance of order and discipline in a program or facility under sub. (2) and that does at least one of the following:

a. Results in bodily harm or great bodily harm to a patient or resident.

b. Intimidates, humiliates, threatens, frightens or otherwise harasses a patient or resident.

2. The forcible administration of medication to or the performance of psychosurgery, electroconvulsive therapy or experimental research on a patient or resident with the knowledge that no lawful authority exists for the administration or performance.

(k) "Neglect" means an act, omission or course of conduct by another that, because of the failure to provide adequate food, shelter, clothing, medical care or dental care, creates a significant danger to the physical or mental health of a patient or resident.

(L) "Patient" means any person who does any of the following:

1. Receives care or treatment from a facility or program under sub. (2), from an employe of a facility or program or from a person providing services under contract with a facility or program.

2. Arrives at a facility or program under sub. (2) for the purpose of receiving care or treatment from a facility or program under sub. (2), from an employe of a facility or program under sub. (2), or from a person providing services under contract with a facility or program under sub. (2).

(n) "Reckless abuse" means an act, omission or course of conduct by another, if done recklessly, that is not reasonably necessary for treatment or maintenance of order and discipline in a program or facility under sub. (2) and that does at least one of the following:

1. Results in bodily harm or great bodily harm to a patient or resident.

2. Intimidates, humiliates, threatens, frightens or otherwise harasses a patient or resident.

(o) "Recklessly" means conduct which creates a situation of unreasonable risk of harm to and demonstrates a conscious disregard for the safety of the patient or resident.

(p) "Resident" means any person who resides in a facility under sub. (2).

(q) "State school for the visually handicapped or hearing impaired" means any schools described in s. 115.52 (2).

(r) "State treatment facility" has the meaning given in s. 51.01 (15).

(s) "Treatment facility" has the meaning given in s. 51.01 (19).

(2) APPLICABILITY. This section applies to any of the following types of facilities or programs:

(a) An adult day care center.

(b) An adult family home.

(c) A community−based residential facility.

(d) A foster home.

(e) A group home.

(f) A home health agency.

(g) A hospice.

(h) An inpatient health care facility.

(i) A program under s. 51.42 (2).

(j) A state school for the visually handicapped or hearing impaired.

(k) A state treatment facility.

(L) A treatment facility.

(m) An institution operated by a child welfare agency licensed under s. 48.60 or by a public agency for the care of neglected, dependent or delinquent children.

(n) Any other health facility or care−related facility or home, whether publicly or privately owned.

(3) ABUSE AND NEGLECT; PENALTIES. (a) Any person in charge of or employed in any facility or program under sub. (2) who does any of the following, or who knowingly permits another person to do so, may be penalized under par. (b):

1. Intentionally abuses or intentionally neglects a patient or resident.

2. Recklessly abuses or recklessly neglects a patient or resident.

(b) 1. Any person violating par. (a) 1. under circumstances that cause or are likely to cause great bodily harm is guilty of a Class D felony.

2. Any person violating par. (a) 1. under circumstances that cause or are likely to cause bodily harm is guilty of a Class E felony.

3. Any person violating par. (a) 2. under circumstances that cause or are likely to cause great bodily harm is guilty of a Class E felony.

4. Any person violating par. (a) 2. under circumstances that cause or are likely to cause bodily harm is guilty of a Class A misdemeanor.

5. Any person violating par. (a) 1. or 2. under circumstances not causing and not likely to cause bodily harm is guilty of a Class B misdemeanor.

History: 1993 a. 445; 1995 a. 225.

Evidence that residents suffered weight loss and bedsores was sufficient to support nursing home administrator's conviction of abuse of residents. State v. Serebin, 119 W (2d) 837, 350 NW (2d) 65 (1984).

940.30 False imprisonment. Whoever intentionally confines or restrains another without the person's consent and with knowledge that he or she has no lawful authority to do so is guilty of a Class E felony.

History: 1977 c. 173.

False imprisonment is not a lesser included offense of the crime of kidnapping. Geitner v. State, 59 W (2d) 128, 207 NW (2d) 837.

Victim need only take advantage of reasonable means of escape; victim need not expose self or others to danger in attempt to escape. State v. C.V.C. 153 W (2d) 145, 450 NW (2d) 463 (Ct. App. 1989).

940.305 Taking hostages. (1) Except as provided in sub. (2), whoever by force or threat of imminent force seizes, confines or restrains a person without the person's consent and with the intent to use the person as a hostage in order to influence a person to perform or not to perform some action demanded by the actor is guilty of a Class A felony.

(2) Whoever commits a violation specified under sub. (1) is guilty of a Class B felony if, before the time of the actor's arrest, each person who is held as a hostage is released without bodily harm.

History: 1979 c. 118; 1993 a. 194.

Constitutionality of 940.305 upheld. State v. Bertrand, 162 W (2d) 411, 469 NW (2d) 873 (Ct. App. 1991).

940.31 Kidnapping. (1) Whoever does any of the following is guilty of a Class B felony:

(a) By force or threat of imminent force carries another from one place to another without his or her consent and with intent to cause him or her to be secretly confined or imprisoned or to be carried out of this state or to be held to service against his or her will; or

(b) By force or threat of imminent force seizes or confines another without his or her consent and with intent to cause him or her to be secretly confined or imprisoned or to be carried out of this state or to be held to service against his or her will; or

(c) By deceit induces another to go from one place to another with intent to cause him or her to be secretly confined or imprisoned or to be carried out of this state or to be held to service against his or her will.

(2) (a) Except as provided in par. (b), whoever violates sub. (1) with intent to cause another to transfer property in order to obtain the release of the victim is guilty of a Class A felony.

(b) Whoever violates sub. (1) with intent to cause another to transfer property in order to obtain the release of the victim is guilty of a Class B felony if the victim is released without permanent physical injury prior to the time the first witness is sworn at the trial.

History: 1977 c. 173; 1993 a. 194, 486.

Conviction under (1) (c) does not require proof of express or implied misrepresentations. State v. Dalton, 98 W (2d) 725, 298 NW (2d) 398 (Ct. App. 1980).

"Service" element under (1) (b) is satisfied by proof of sexual assault. State v. Clement, 153 W (2d) 287, 450 NW (2d) 789 (Ct. App. 1989).

Parental immunity does not extend to an agent acting for the parent. State v. Simplot, 180 W (2d) 383, 509 NW (2d) 338 (Ct. App. 1993).

Forced movement of a person from one part of a building to another satisfies the "carries another from one place to another" element of sub. (1) (a). State v. Wagner, 191 W (2d) 322, 528 NW (2d) 85 (Ct. App. 1995).

940.32 Stalking. (1) In this section:

(a) "Course of conduct" means repeatedly maintaining a visual or physical proximity to a person.

(b) "Immediate family" means a spouse, parent, child, sibling, or any other person who regularly resides in the household or who within the prior 6 months regularly resided in the household.

(c) "Labor dispute" includes any controversy concerning terms, tenure or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing or seeking to arrange terms or conditions of employment, regardless of whether the disputants stand in the proximate relation of employer and employe.

(cg) "Personally identifiable information" has the meaning given in s. 19.62 (5).

(cr) "Record" has the meaning given in s. 19.32 (2).

(d) "Repeatedly" means on 2 or more calendar days.

(2) Whoever meets all of the following criteria is guilty of a Class A misdemeanor:

(a) The actor intentionally engages in a course of conduct directed at a specific person that would cause a reasonable person to fear bodily injury to himself or herself or a member of his or her immediate family or to fear the death of himself or herself or a member of his or her immediate family.

(b) The actor has knowledge or should have knowledge that the specific person will be placed in reasonable fear of bodily injury to himself or herself or a member of his or her immediate family or will be placed in reasonable fear of the death of himself or herself or a member of his or her immediate family.

(c) The actor's acts induce fear in the specific person of bodily injury to himself or herself or a member of his or her immediate family or induce fear in the specific person of the death of himself or herself or a member of his or her immediate family.

(2m) Whoever violates sub. (2) is guilty of a Class D felony if he or she intentionally gains access to a record in electronic format that contains personally identifiable information regarding the victim in order to facilitate the violation under sub. (2).

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

(a) The act results in bodily harm to the victim.

(b) The actor has a previous conviction under this section or s. 947.013 (1r), (1t), (1v) or (1x) for a violation against the same victim and the present violation occurs within 7 years after the prior conviction.

(3m) Whoever violates sub. (3) under all of the following circumstances is guilty of a Class D felony:

(a) The person has a prior conviction under sub. (2), (2m) or (3) or this subsection or s. 947.013 (1r), (1t), (1v) or (1x).

(b) The person intentionally gains access to a record in order to facilitate the current violation under sub. (3).

(4) (a) This section does not apply to conduct that is or acts that are protected by the person's right to freedom of speech or to peaceably assemble with others under the state and U.S. constitutions, including, but not limited to, any of the following:

1. Giving publicity to and obtaining or communicating information regarding any subject, whether by advertising, speaking or patrolling any public street or any place where any person or persons may lawfully be.

2. Assembling peaceably.

3. Peaceful picketing or patrolling.

(b) Paragraph (a) does not limit the activities that may be considered to serve a legitimate purpose under this section.

(5) This section does not apply to conduct arising out of or in connection with a labor dispute.

(6) The provisions of this statute are severable. If any provision of this statute is invalid or if any application thereof is invalid, such invalidity shall not affect other provisions or applications which can be given effect without the invalid provision or application.

History: 1993 a. 96, 496.

940.34 Duty to aid victim or report crime. (1) (a) Whoever violates sub. (2) (a) is guilty of a Class C misdemeanor.

(b) Whoever violates sub. (2) (b) is guilty of a Class C misdemeanor and is subject to discipline under s. 440.26 (6).

(c) Whoever violates sub. (2) (c) is guilty of a Class C misdemeanor.

(2) (a) Any person who knows that a crime is being committed and that a victim is exposed to bodily harm shall summon law enforcement officers or other assistance or shall provide assistance to the victim.

(b) Any person licensed as a private detective or granted a private security permit under s. 440.26 who has reasonable grounds to believe that a crime is being committed or has been committed shall notify promptly an appropriate law enforcement agency of the facts which form the basis for this belief.

(c) 1. In this paragraph, "unlicensed private security person" means a private security person, as defined in s. 440.26 (1m), who is exempt from the permit and licensure requirements of s. 440.26.

NOTE: Subd. 1. is amended eff. 7−1−97 by 1995 Wis. Act 461 to read:

1. In this paragraph, "unlicensed private security person" means a private security person, as defined in s. 440.26 (1m) (h), who is exempt from the permit and licensure requirements of s. 440.26.

2. Any unlicensed private security person who has reasonable grounds to believe that a crime is being committed or has been committed shall notify promptly an appropriate law enforcement agency of the facts which form the basis for this belief.

(d) A person need not comply with this subsection if any of the following apply:

1. Compliance would place him or her in danger.

2. Compliance would interfere with duties the person owes to others.

3. In the circumstances described under par. (a), assistance is being summoned or provided by others.

4. In the circumstances described under par. (b) or (c), the crime or alleged crime has been reported to an appropriate law enforcement agency by others.

(2m) If a person is subject to sub. (2) (b) or (c), the person need not comply with sub. (2) (b) or (c) until after he or she has summoned or provided assistance to a victim.

(3) If a person renders emergency care for a victim, s. 895.48 (1) applies. Any person who provides other reasonable assistance under this section is immune from civil liability for his or her acts or omissions in providing the assistance. This immunity does not apply if the person receives or expects to receive compensation for providing the assistance.

History: 1983 a. 198; 1985 a. 152, 332; 1987 a. 14; 1995 a. 461.

This section is not unconstitutional. For a conviction, it must be proved that an accused believed a crime was being committed and that a victim was exposed to bodily harm. The reporting required does not require the defendant to incriminate himself or herself as the statute contains no mandate that an individual identify oneself. Whether a defendant fits within an exception under sub. (2) (d) is a matter of affirmative defense. State v. LaPlante, 186 W (2d) 427, 521 NW (2d) 448 (Ct. App. 1994).

940.41 Definitions. In ss. 940.42 to 940.49:

(1g) "Law enforcement agency" has the meaning given in s. 165.83 (1) (b).

(1r) "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 provided information concerning any crime to any peace officer or prosecutor; who has provided information concerning a crime to any employe or agent of a law enforcement agency using a crime reporting telephone hotline or other telephone number provided by the law enforcement agency; 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.

History: 1981 c. 118; 1993 a. 128.

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.

History: 1981 c. 118.

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.

History: 1981 c. 118.

Conspiracy to intimidate witness is included under (4). State v. Seibert, 141 W (2d) 753, 416 NW (2d) 900 (Ct. App. 1987).

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.

History: 1981 c. 118.

Jury instruction for violation of 940.44 should specify the underlying crime and that a defendant cannot be found guilty unless the elements of the underlying crime are proved beyond a reasonable doubt. State v. Thomas, 161 W (2d) 616, 468 NW (2d) 729 (Ct. App. 1991).

Acquittal on underlying charge does not require acquittal on charge under 940.44 as jury may have exercised its right to return not guilty verdict irrespective of evidence on underlying charge. State v. Thomas, 161 W (2d) 616, 468 NW (2d) 729 (Ct. App. 1991).

The disorderly conduct statute, s. 947.01, does not require a victim, but when the disorderly conduct is directed at a person, that person is the victim for the purpose of prosecuting the perpetrator for intimidating a victim under this section. State v. Vinje, 201 W (2d) 98, 548 NW (2d) 118 (Ct. App. 1996).

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.

History: 1981 c. 118.

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.

History: 1981 c. 118.

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.

History: 1981 c. 118.

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.

History: 1981 c. 118.

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.

History: 1981 c. 118.