

NOTE: Sub. (2) is shown as amended eff. 2–1–03 by 2001 Wis. Act 109. Prior to 2–1–03 it reads:

(2) Whoever permits any premises under his or her care, control or supervision to be used by an assembly with knowledge that the purpose of the assembly is to advocate or teach the duty, necessity, desirability or propriety of overthrowing the government of the United States or this state by the use or threat of physical violence with intent that such government be overthrown or, after learning that the premises are being so used, permits such use to be continued is guilty of a Class E felony.

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

946.05 Flag desecration. (1) Whoever intentionally and publicly mutilates, defiles, or casts contempt upon the flag is guilty of a Class I felony.

NOTE: Sub. (1) is shown as amended eff. 2–1–03 by 2001 Wis. Act 109. Prior to 2–1–03 it reads:

(1) Whoever intentionally and publicly mutilates, defiles, or casts contempt upon the flag is guilty of a Class E felony.

(2) In this section “flag” means anything which is or purports to be the Stars and Stripes, the United States shield, the United States coat of arms, the Wisconsin state flag, or a copy, picture, or representation of any of them.

NOTE: This section was held to be unconstitutionally overbroad by the Supreme Court in *State v. Janssen*, 218 Wis. 2d 362, 580 N.W.2d 362 (1998).

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

946.06 Improper use of the flag. (1) Whoever intentionally does any of the following is guilty of a Class A misdemeanor:

(a) Places on or attaches to the flag any word, mark, design, or advertisement not properly a part of such flag; or

(b) Exposes to public view a flag upon which has been placed or attached a word, mark, design, or advertisement not properly a part of such flag; or

(c) Manufactures or exposes to public view an article of merchandise or a wrapper or receptacle for merchandise upon which the flag is depicted; or

(d) Uses the flag for commercial advertising purposes.

(2) This section does not apply to flags depicted on written or printed documents or periodicals or on stationery, ornaments, pictures, or jewelry, provided there are no unauthorized words or designs on such flag and provided the flag is not connected with any advertisement.

(3) In this section “flag” has the meaning designated in s. 946.05.

History: 1977 c. 173.

A flag misuse statute was unconstitutional as applied to a flag hung upside down with a peace symbol affixed. The context imbued the display with protected elements of communication. *Spence v. State of Washington*, 418 U.S. 405 (1974).

The Washington flag desecration statute held unconstitutional in *Spence*, when applied to a mere display of an altered flag in the absence of a disturbance of the peace, was identical in all essential ways to this section. *Koser v. County of Price*, 834 F. Supp. 305 (1993).

SUBCHAPTER II

BRIBERY AND OFFICIAL MISCONDUCT

946.10 Bribery of public officers and employees. Whoever does either of the following is guilty of a Class H felony:

NOTE: 946.10 (intro.) is shown as amended eff. 2–1–03 by 2001 Wis. Act 109. Prior to 2–1–03 it reads:

946.10 Bribery of public officers and employees. Whoever does either of the following is guilty of a Class D felony:

(1) Whoever, with intent to influence the conduct of any public officer or public employee in relation to any matter which by law is pending or might come before the officer or employee in the officer’s or employee’s capacity as such officer or employee or with intent to induce the officer or employee to do or omit to do any act in violation of the officer’s or employee’s lawful duty transfers or promises to the officer or employee or on the officer’s or employee’s behalf any property or any personal advantage which the officer or employee is not authorized to receive; or

(2) Any public officer or public employee who directly or indirectly accepts or offers to accept any property or any personal

advantage, which the officer or employee is not authorized to receive, pursuant to an understanding that the officer or employee will act in a certain manner in relation to any matter which by law is pending or might come before the officer or employee in the officer’s or employee’s capacity as such officer or employee or that the officer or employee will do or omit to do any act in violation of the officer’s or employee’s lawful duty.

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

Circumstantial evidence supported an inference that the defendant intended to influence a public official’s actions. *State v. Rosenfeld*, 93 Wis. 2d 325, 286 N.W.2d 596 (1980).

A sworn juror is a public employee under sub. (2). *State v. Sammons*, 141 Wis. 2d 833, 417 N.W.2d 190 (Ct. App. 1987).

946.11 Special privileges from public utilities.

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

NOTE: Sub. (1) (intro.) is shown as amended eff. 2–1–03 by 2001 Wis. Act 109. Prior to 2–1–03 it reads:

(1) Whoever does the following is guilty of a Class E felony:

(a) Whoever offers or gives for any purpose to any public officer or to any person at the request or for the advantage of such officer any free pass or frank, or any privilege withheld from any person, for the traveling accommodation or transportation of any person or property or for the transmission of any message or communication; or

(b) Any public officer who asks for or accepts from any person or uses in any manner or for any purpose any free pass or frank, or any privilege withheld from any person for the traveling accommodation or transportation of any person or property or for the transmission of any message or communication; or

(c) Any public utility or agent or officer thereof who offers or gives for any purpose to any public officer or to any person at the request or for the advantage of such officer, any frank or any privilege withheld from any person for any product or service produced, transmitted, delivered, furnished or rendered or to be produced, transmitted, delivered, furnished or rendered by any public utility, or any free product or service whatsoever; or

(d) Any public officer who asks for or accepts or uses in any manner or for any purpose any frank or privilege withheld from any person for any product or service produced, transmitted, delivered, furnished or rendered by any public utility.

(2) In this section:

(a) “Free pass” means any form of ticket or mileage entitling the holder to travel over any part of a railroad or other public transportation system and issued to the holder as a gift or in consideration or partial consideration of any service performed or to be performed by such holder, except that it does not include such ticket or mileage when issued to an employee of the railroad or public transportation system pursuant to a contract of employment and not in excess of the transportation rights of other employees of the same class and seniority, nor does it include free transportation to police officers or fire fighters when on duty;

(b) “Privilege” has the meaning designated under s. 11.40;

(c) “Public utility” has the meaning designated in s. 196.01 (5) and includes a telecommunications carrier, as defined in s. 196.01 (8m).

(3) This section does not apply to notaries public and regular employees or pensioners of a railroad or other public utility who hold public offices for which the annual compensation is not more than \$300 to whom no passes or privileges are extended beyond those which are extended to other regular employees or pensioners of such corporation.

History: 1975 c. 93; 1977 c. 173; 1985 a. 135; 1993 a. 496; 2001 a. 109.

946.12 Misconduct in public office. Any public officer or public employee who does any of the following is guilty of a Class I felony:

NOTE: 946.12 (intro.) is shown as amended eff. 2–1–03 by 2001 Wis. Act 109. Prior to 2–1–03 it reads:

946.12 Misconduct in public office. Any public officer or public employee who does any of the following is guilty of a Class E felony:

(1) Intentionally fails or refuses to perform a known mandatory, nondiscretionary, ministerial duty of the officer's or employee's office or employment within the time or in the manner required by law; or

(2) In the officer's or employee's capacity as such officer or employee, does an act which the officer or employee knows is in excess of the officer's or employee's lawful authority or which the officer or employee knows the officer or employee is forbidden by law to do in the officer's or employee's official capacity; or

(3) Whether by act of commission or omission, in the officer's or employee's capacity as such officer or employee exercises a discretionary power in a manner inconsistent with the duties of the officer's or employee's office or employment or the rights of others and with intent to obtain a dishonest advantage for the officer or employee or another; or

(4) In the officer's or employee's capacity as such officer or employee, makes an entry in an account or record book or return, certificate, report or statement which in a material respect the officer or employee intentionally falsifies; or

(5) Under color of the officer's or employee's office or employment, intentionally solicits or accepts for the performance of any service or duty anything of value which the officer or employee knows is greater or less than is fixed by law.

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

Sub. (5) prohibits misconduct in public office with constitutional specificity. Ryan v. State, 79 Wis. 2d 83, 255 N.W.2d 910 (1977).

Sub. (3) applies to a corrupt act under color of office and under de facto powers conferred by practice and usage. A person not a public officer may be charged as a party to the crime of official misconduct. State v. Tronca, 84 Wis. 2d 68, 267 N.W.2d 216 (1978).

An on-duty prison guard did not violate sub. (2) by fornicating with a prisoner in a cell. State v. Schmit, 115 Wis. 2d 657, 340 N.W.2d 752 (Ct. App. 1983).

946.13 Private interest in public contract prohibited.

(1) Any public officer or public employee who does any of the following is guilty of a Class I felony:

NOTE: Sub. (1) (intro.) is shown as amended eff. 2–1–03 by 2001 Wis. Act 109. Prior to 2–1–03 it reads:

(1) Any public officer or public employee who does any of the following is guilty of a Class E felony:

(a) In the officer's or employee's private capacity, negotiates or bids for or enters into a contract in which the officer or employee has a private pecuniary interest, direct or indirect, if at the same time the officer or employee is authorized or required by law to participate in the officer's or employee's capacity as such officer or employee in the making of that contract or to perform in regard to that contract some official function requiring the exercise of discretion on the officer's or employee's part; or

(b) In the officer's or employee's capacity as such officer or employee, participates in the making of a contract in which the officer or employee has a private pecuniary interest, direct or indirect, or performs in regard to that contract some function requiring the exercise of discretion on the officer's or employee's part.

(2) Subsection (1) does not apply to any of the following:

(a) Contracts in which any single public officer or employee is privately interested that do not involve receipts and disbursements by the state or its political subdivision aggregating more than \$15,000 in any year.

(b) Contracts involving the deposit of public funds in public depositories.

(c) Contracts involving loans made pursuant to s. 67.12.

(d) Contracts for the publication of legal notices required to be published, provided such notices are published at a rate not higher than that prescribed by law.

(e) Contracts for the issuance to a public officer or employee of tax titles, tax certificates, or instruments representing an interest in, or secured by, any fund consisting in whole or in part of taxes in the process of collection, provided such titles, certificates, or instruments are issued in payment of salary or other obligations due such officer or employee.

(f) Contracts for the sale of bonds or securities issued by a political subdivision of the state; provided such bonds or securities are sold at a bona fide public sale to the highest bidder and the public officer or employee acquiring the private interest has no duty to vote upon the issuance of the bonds or securities.

(g) Contracts with, or tax credits or payments received by, public officers or employees for wildlife damage claims or abatement under s. 29.889, for farmland preservation under subch. IX of ch. 71 and s. 91.13, soil and water resource management under s. 92.14, soil erosion control under s. 92.10, 1985 stats., animal waste management under s. 92.15, 1985 stats., and nonpoint source water pollution abatement under s. 281.65.

(3) A contract entered into in violation of this section is void and the state or the political subdivision in whose behalf the contract was made incurs no liability thereon.

(4) In this section "contract" includes a conveyance.

(5) Subsection (1) (b) shall not apply to a public officer or public employee by reason of his or her holding not more than 2% of the outstanding capital stock of a corporate body involved in such contract.

(6) Subsection (3) shall not apply to contracts creating a public debt, as defined in s. 18.01 (4), if the requirements of s. 18.14 (1) have been met. No evidence of indebtedness, as defined in s. 18.01 (3), shall be invalidated on account of a violation of this section by a public officer or public employee, but such officer or employee and the surety on the officer's or employee's official bond shall be liable to the state for any loss to it occasioned by such violation.

(7) Subsection (1) shall not apply to any public officer or public employee, who receives compensation for the officer's or employee's services as such officer or employee, exclusive of advances or reimbursements for expenses, of less than \$10,000 per year, merely by reason of his or her being a director, officer, employee, agent or attorney of or for a state or national bank, savings bank or trust company, or any holding company thereof. This subsection shall not apply to any such person whose compensation by such financial institution is directly dependent upon procuring public business. Compensation determined by longevity, general quality of work or the overall performance and condition of such financial institution shall not be deemed compensation directly dependent upon procuring public business.

(8) Subsection (1) shall not apply to contracts or transactions made or consummated or bonds issued under s. 66.1103.

(9) Subsection (1) does not apply to the member of a local committee appointed under s. 289.33 (7) (a) acting as a member of that committee in negotiation, arbitration or ratification of agreements under s. 289.33.

(10) Subsection (1) (a) does not apply to a member of a local workforce development board established under 29 USC 2832 or to a member of the council on workforce investment established under 29 USC 2821.

(11) Subsection (1) does not apply to an individual who receives compensation for services as a public officer or public employee of less than \$10,000 annually, exclusive of advances or reimbursements for expenses, merely because that individual is a partner, shareholder or employee of a law firm that serves as legal counsel to the public body that the officer or employee serves, unless one of the following applies:

(a) The individual has an interest in that law firm greater than 2% of its net profit or loss.

(b) The individual participates in making a contract between that public body and that law firm or exercises any official discretion with respect to a contract between them.

(c) The individual's compensation from the law firm directly depends on the individual's procurement of business with public bodies.

History: 1971 c. 40 s. 93; 1973 c. 12 s. 37; 1973 c. 50, 265; 1977 c. 166, 173; 1983 a. 282; 1987 a. 344, 378, 399; 1989 a. 31, 232; 1993 a. 486; 1995 a. 27, 225, 227, 435; 1997 a. 35, 248; 1999 a. 9, 85; 1999 a. 150 s. 672; 2001 a. 109.

Conviction of a county board member for violating sub. (1) by accepting a job as airport manager at a time when he was a member of the county board, which was a cosponsor and co-owner of the airport, was reversed under evidence that he was appointed pursuant to advice and approval of the county corporation counsel. *State v. Davis*, 63 Wis. 2d 75, 216 N.W.2d 31 (1974).

Sub. (1) (b) is a strict liability offense, without the element of corrupt motive. *State v. Stoehr*, 134 Wis. 2d 66, 396 N.W.2d 177 (1986).

The defendant could not have had a pecuniary interest in or negotiated in his private capacity for a position that had not yet been posted. *State v. Paul Venema*, 2002 WI App 202, ___ Wis. 2d, ___, 650 N.W.2d 898.

A county board member employed by an engineering and survey firm may have a possible conflict of interest in public contracts. 60 Atty. Gen. 98.

A member of the Wisconsin board of vocational, technical and adult education may not bid on and contract for the construction of a building project for a vocational-technical district which would entail expenditures exceeding \$2,000 in any year, where availability of federal funds for use on such project is subject to his approval as a member of such board. 60 Atty. Gen. 310.

Discussion of conflicts arising from election of a school principal to the office of alderperson. 60 Atty. Gen. 367.

Appointment of counsel for indigents involves a public contract. 62 Atty. Gen. 118.

A county supervisor who is a pharmacist probably does not violate this section in furnishing prescription services to medicaid patients when the state is solely liable for payment. 64 Atty. Gen. 108.

The marital property law does not change the applicability of this section to a member of a governmental body when that body employs the member's spouse. 76 Atty. Gen. 15.

The applicability of this section is discussed. 76 Atty. Gen. 178, 278.

Sub. (1) (a) may be violated by members of the Private Industry Councils when private or public entities of which they are executives, directors or board members receive benefits under the Job Training Partnership Act. 77 Atty. Gen. 306.

946.14 Purchasing claims at less than full value. Any public officer or public employee who in a private capacity directly or indirectly intentionally purchases for less than full value or discounts any claim held by another against the state or a political subdivision thereof or against any public fund is guilty of a Class I felony.

NOTE: This section is shown as amended eff. 2–1–03 by 2001 Wis. Act 109. Prior to 2–1–03 it reads:

946.14 Purchasing claims at less than full value. Any public officer or public employee who in a private capacity directly or indirectly intentionally purchases for less than full value or discounts any claim held by another against the state or a political subdivision thereof or against any public fund is guilty of a Class E felony.

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

946.15 Public construction contracts at less than full rate. (1) Any employer, or any agent or employee of an employer, who induces any person who seeks to be or is employed pursuant to a public contract as defined in s. 66.0901 (1) (c) or who seeks to be or is employed on a project on which a prevailing wage rate determination has been issued by the department of workforce development under s. 66.0903 (3), 103.49 (3), 103.50 (3) or 229.8275 (3) or by a local governmental unit, as defined in s. 66.0903 (1) (d), under s. 66.0903 (6) to give up, waive or return any part of the compensation to which that person is entitled under his or her contract of employment or under the prevailing wage rate determination issued by the department or local governmental unit, or who reduces the hourly basic rate of pay normally paid to an employee for work on a project on which a prevailing wage rate determination has not been issued under s. 66.0903 (3) or (6), 103.49 (3), 103.50 (3) or 229.8275 (3) during a week in which the employee works both on a project on which a prevailing wage rate determination has been issued and on a project on which a prevailing wage rate determination has not been issued, is guilty of a Class I felony.

NOTE: Sub. (1) is shown as amended eff. 2–1–03 by 2001 Wis. Act 109. Prior to 2–1–03 it reads:

(1) Any employer, or any agent or employee of an employer, who induces any person who seeks to be or is employed pursuant to a public contract as defined in s. 66.0901 (1) (c) or who seeks to be or is employed on a project on which a prevailing wage rate determination has been issued by the department of workforce development under s. 66.0903 (3), 103.49 (3), 103.50 (3) or 229.8275 (3) or by a local governmental unit, as defined in s. 66.0903 (1) (d), under s. 66.0903 (6) to give up, waive or return any part of the compensation to which that

person is entitled under his or her contract of employment or under the prevailing wage rate determination issued by the department or local governmental unit, or who reduces the hourly basic rate of pay normally paid to an employee for work on a project on which a prevailing wage rate determination has not been issued under s. 66.0903 (3) or (6), 103.49 (3), 103.50 (3) or 229.8275 (3) during a week in which the employee works both on a project on which a prevailing wage rate determination has been issued and on a project on which a prevailing wage rate determination has not been issued, is guilty of a Class E felony.

(2) Any person employed pursuant to a public contract as defined in s. 66.0901 (1) (c) or employed on a project on which a prevailing wage rate determination has been issued by the department of workforce development under s. 66.0903 (3), 103.49 (3), 103.50 (3) or 229.8275 (3) or by a local governmental unit, as defined in s. 66.0903 (1) (d), under s. 66.0903 (6) who gives up, waives or returns to the employer or agent of the employer any part of the compensation to which the employee is entitled under his or her contract of employment or under the prevailing wage rate determination issued by the department or local governmental unit, or who gives up any part of the compensation to which he or she is normally entitled for work on a project on which a prevailing wage rate determination has not been issued under s. 66.0903 (3) or (6), 103.49 (3), 103.50 (3) or 229.8275 (3) during a week in which the person works part-time on a project on which a prevailing wage rate determination has been issued and part-time on a project on which a prevailing wage rate determination has not been issued, is guilty of a Class C misdemeanor.

(3) Any employer or labor organization, or any agent or employee of an employer or labor organization, who induces any person who seeks to be or is employed on a project on which a prevailing wage rate determination has been issued by the department of workforce development under s. 66.0903 (3), 103.49 (3), 103.50 (3) or 229.8275 (3) or by a local governmental unit, as defined in s. 66.0903 (1) (d), under s. 66.0903 (6) to permit any part of the wages to which that person is entitled under the prevailing wage rate determination issued by the department or local governmental unit to be deducted from the person's pay is guilty of a Class I felony, unless the deduction would be permitted under 29 CFR 3.5 or 3.6 from a person who is working on a project that is subject to 40 USC 276c.

NOTE: Sub. (3) is shown as amended eff. 2–1–03 by 2001 Wis. Act 109. Prior to 2–1–03 it reads:

(3) Any employer or labor organization, or any agent or employee of an employer or labor organization, who induces any person who seeks to be or is employed on a project on which a prevailing wage rate determination has been issued by the department of workforce development under s. 66.0903 (3), 103.49 (3), 103.50 (3) or 229.8275 (3) or by a local governmental unit, as defined in s. 66.0903 (1) (d), under s. 66.0903 (6) to permit any part of the wages to which that person is entitled under the prevailing wage rate determination issued by the department or local governmental unit to be deducted from the person's pay is guilty of a Class E felony, unless the deduction would be permitted under 29 CFR 3.5 or 3.6 from a person who is working on a project that is subject to 40 USC 276c.

(4) Any person employed on a project on which a prevailing wage rate determination has been issued by the department of workforce development under s. 66.0903 (3), 103.49 (3), 103.50 (3) or 229.8275 (3) or by a local governmental unit, as defined in s. 66.0903 (1) (d), under s. 66.0903 (6) who permits any part of the wages to which that person is entitled under the prevailing wage rate determination issued by the department or local governmental unit to be deducted from his or her pay is guilty of a Class C misdemeanor, unless the deduction would be permitted under 29 CFR 3.5 or 3.6 from a person who is working on a project that is subject to 40 USC 276c.

History: 1979 c. 269; 1995 a. 27 s. 9130 (4); 1995 a. 215; 1997 a. 3; 1999 a. 150, 167; 2001 a. 30, 109.

946.16 Judicial officer collecting claims. Any judicial officer who causes to be brought in a court over which the officer presides any action or proceeding upon a claim placed with the officer as agent or attorney for collection is guilty of a Class B misdemeanor.

History: 1977 c. 173.

946.17 Corrupt means to influence legislation; disclosure of interest. Any person who gives or agrees or offers to

give anything of value to any person, for the service of such person or of any other person in procuring the passage or defeat of any measure before the legislature or before either house or any committee thereof, upon the contingency or condition of the passage or defeat of the measure, or who receives, or agrees to receive anything of value for such service, upon any such contingency or condition, or who, having a pecuniary or other interest, or acting as the agent or attorney of any person in procuring or attempting to procure the passage or defeat of any measure before the legislature or before either house or any committee thereof, attempts in any manner to influence any member of the legislature for or against the measure, without first making known to the member the real and true interest he or she has in the measure, either personally or as such agent or attorney, is guilty of a class A misdemeanor.

History: 1977 c. 278 s. 1; Stats. 1977 s. 946.17; 1993 a. 213.

946.18 Misconduct sections apply to all public officers. Sections 946.10 to 946.17 apply to public officers, whether legally constituted or exercising powers as if legally constituted.

History: 1977 c. 278; 1979 c. 110.

SUBCHAPTER III

PERJURY AND FALSE SWEARING

946.31 Perjury. (1) Whoever under oath or affirmation orally makes a false material statement which the person does not believe to be true, in any matter, cause, action or proceeding, before any of the following, whether legally constituted or exercising powers as if legally constituted, is guilty of a Class H felony:

NOTE: Sub. (1) (intro.) is shown as amended eff. 2–1–03 by 2001 Wis. Act 109. Prior to 2–1–03 it reads:

(1) Whoever under oath or affirmation orally makes a false material statement which the person does not believe to be true, in any matter, cause, action or proceeding, before any of the following, whether legally constituted or exercising powers as if legally constituted, is guilty of a Class D felony:

- (a) A court;
- (b) A magistrate;
- (c) A judge, referee or court commissioner;
- (d) An administrative agency or arbitrator authorized by statute to determine issues of fact;
- (e) A notary public while taking testimony for use in an action or proceeding pending in court;
- (f) An officer authorized to conduct inquests of the dead;
- (g) A grand jury;
- (h) A legislative body or committee.

(2) It is not a defense to a prosecution under this section that the perjured testimony was corrected or retracted.

History: 1977 c. 173; 1979 c. 110; 2001 a. 109.

An arbitrator selected from a list provided by WERC is authorized by s. 111.10 to arbitrate as provided in ch. 298 [now ch. 788] and so is “authorized by statute” within meaning of s. 946.31 (1) (d). *Layton School of Art & Design v. WERC*, 82 Wis. 2d 324, 262 N.W.2d 218 (1978).

Perjury consists of a false statement that the defendant knew was false, was made under oath in a proceeding before a judge, and was material to the proceeding. Materiality is determined by whether the trial court could have relied on the testimony in making a decision, not on whether it actually did. *State v. Munz*, 198 Wis. 2d 379, 541 N.W.2d 821 (Ct. App. 1995).

A defendant may be charged with multiple counts of perjury based on testimony given in the same proceeding when each charge requires proof of an additional fact that the others do not. *State v. Warren*, 229 Wis. 2d 172, 599 N.W.2d 431 (Ct. App. 1999).

Issue preclusion does not bar the prosecution of a defendant for perjury who was tried and acquitted on a single issue when newly discovered evidence suggests that the defendant falsely testified on the issue. The state must show that: 1) the evidence came to the state’s evidence after trial; 2) the state was not negligent in failing to discover the evidence; 3) the evidence is material to the issue; and 4) the evidence is not merely cumulative. *State v. Canon*, 2001 WI 11, 241 Wis. 2d 164, 622 N.W.2d 270.

Perjury prosecutions after acquittals. *Shellenberger*. 71 MLR 703 (1988).

946.32 False swearing. (1) Whoever does either of the following is guilty of a Class H felony:

NOTE: Sub. (1) (intro.) is shown as amended eff. 2–1–03 by 2001 Wis. Act 109. Prior to 2–1–03 it reads:

- (1) Whoever does either of the following is guilty of a Class D felony:

(a) Under oath or affirmation makes or subscribes a false statement which he or she does not believe is true, when such oath or affirmation is authorized or required by law or is required by any public officer or governmental agency as a prerequisite to such officer or agency taking some official action.

(b) Makes or subscribes 2 inconsistent statements under oath or affirmation in regard to any matter respecting which an oath or affirmation is, in each case, authorized or required by law or required by any public officer or governmental agency as a prerequisite to such officer or agency taking some official action, under circumstances which demonstrate that the witness or subscriber knew at least one of the statements to be false when made. The period of limitations within which prosecution may be commenced runs from the time of the first statement.

(2) Whoever under oath or affirmation makes or subscribes a false statement which the person does not believe is true is guilty of a Class A misdemeanor.

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

This section applies to oral statements. The mere fact that a statement is permitted by law does not mean it is “authorized by law” within meaning of sub. (1) (a). *State v. Devitt*, 82 Wis. 2d 262, 262 N.W.2d 73 (1978).

The reference to the statute of limitations under sub. (1) (b) does not make it an element of the offense. The statute of limitations is an affirmative defense and is subject to tolling under s. 939.74. *State v. Slaughter*, 200 Wis. 2d 190, 546 N.W.2d 490 (Ct. App. 1996).

What is to be “authorized or required” under sub. (1) (b) is the oath itself not the matter respecting which the oath is taken. *State v. Slaughter*, 200 Wis. 2d 190, 546 N.W.2d 490 (Ct. App. 1996).

SUBCHAPTER IV

INTERFERENCE WITH LAW ENFORCEMENT

946.40 Refusing to aid officer. (1) Whoever, without reasonable excuse, refuses or fails, upon command, to aid any person known by the person to be a peace officer is guilty of a Class C misdemeanor.

(2) This section does not apply if under the circumstances the officer was not authorized to command such assistance.

History: 1977 c. 173.

Under s. 343.305, hospital personnel must administer a blood alcohol test and report the results at the request of an officer, subject to the penalty under 946.40. 68 Atty. Gen. 209.

In certain circumstances a peace officer may command medical staff at a hospital or clinic to gather evidence from a sexual assault victim. 72 Atty. Gen. 107.

946.41 Resisting or obstructing officer. (1) Whoever knowingly resists or obstructs an officer while such officer is doing any act in an official capacity and with lawful authority, is guilty of a Class A misdemeanor.

(2) In this section:

(a) “Obstructs” includes without limitation knowingly giving false information to the officer or knowingly placing physical evidence with intent to mislead the officer in the performance of his or her duty including the service of any summons or civil process.

(b) “Officer” means a peace officer or other public officer or public employee having the authority by virtue of the officer’s or employee’s office or employment to take another into custody.

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

NOTE: Sub. (2m) (intro.) is shown as amended eff. 2–1–03 by 2001 Wis. Act 109. Prior to 2–1–03 it reads:

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

(a) The violator gives false information or places physical evidence with intent to mislead an officer.

(b) At a criminal trial, the trier of fact considers the false information or physical evidence.

(c) The trial results in the conviction of an innocent person.

(3) Whoever by violating this section hinders, delays or prevents an officer from properly serving or executing any summons or civil process, is civilly liable to the person injured for any actual

loss caused thereby and to the officer or the officer's superior for any damages adjudged against either of them by reason thereof.

History: 1977 c. 173; 1983 a. 189; 1989 a. 121; 1993 a. 486; 2001 a. 109.

The state must prove that the accused knew that the officer was acting in an official capacity and knew that the officer was acting with lawful authority when the accused allegedly resisted or obstructed the officer. *State v. Lossman*, 118 Wis. 2d 526, 348 N.W.2d 159 (1984).

Knowingly providing false information with intent to mislead is obstruction as a matter of law. *State v. Caldwell*, 154 Wis. 2d 683, 454 N.W.2d 13 (Ct. App. 1990).

No law allows officers to arrest for obstruction on a person's refusal to give his or her name. Mere silence is insufficient to constitute obstruction. *Henes v. Morrissey*, 194 Wis. 2d 339, 533 N.W.2d 802 (1995).

Fleeing and hiding from an officer may constitute obstructing. *State v. Grobstick*, 200 Wis. 2d 242, 546 N.W.2d 494 (1996).

Before a charge is made under this section, the prosecutor should have sound reasons for believing that statements made to the police were knowingly and intentionally made for the purpose of deceiving and misleading the police. False answers or statements that a defendant utters intending to exculpate himself or herself against a charge of a crime and to prevent prosecution are not subject to prosecution. *State v. Espinosa*, 2002 WI App 51, 250 Wis. 2d 804, 641 N.W.2d 484.

946.415 Failure to comply with officer's attempt to take person into custody. (1) In this section, "officer" has the meaning given in s. 946.41 (2) (b).

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

NOTE: Sub. (2) (intro.) is shown as amended eff. 2–1–03 by 2001 Wis. Act 109. Prior to 2–1–03 it reads:

(2) Whoever intentionally does all of the following is guilty of a Class E felony:

(a) Refuses to comply with an officer's lawful attempt to take him or her into custody.

(b) Retreats or remains in a building or place and, through action or threat, attempts to prevent the officer from taking him or her into custody.

(c) While acting under pars. (a) and (b), remains or becomes armed with a dangerous weapon or threatens to use a dangerous weapon regardless of whether he or she has a dangerous weapon.

History: 1995 a. 93; 2001 a. 109.

This section delineates one crime: a suspect's armed, physical refusal to be taken into custody. It can be committed by action or threat, which are alternative ways of threatening an officer to avoid being taken into custody. A jury instruction requiring unanimity on which occurred is not required. *State v. Koeppen*, 2000 WI App 121, 237 Wis. 2d 418, 614 N.W.2d 530.

946.42 Escape. (1) In this section:

(a) "Custody" includes without limitation actual custody of an institution, including a secured correctional facility, as defined in s. 938.02 (15m), a secured child caring institution, as defined in s. 938.02 (15g), a secured group home, as defined in s. 938.02 (15p), a secure detention facility, as defined in s. 938.02 (16), a Type 2 child caring institution, as defined in s. 938.02 (19r), or a juvenile portion of a county jail, or of a peace officer or institution guard and constructive custody of prisoners and juveniles subject to an order under s. 48.366, 938.183, 938.34 (4d), (4h) or (4m) or 938.357 (4) or (5) (e) temporarily outside the institution whether for the purpose of work, school, medical care, a leave granted under s. 303.068, a temporary leave or furlough granted to a juvenile or otherwise. Under s. 303.08 (6) it means, without limitation, that of the sheriff of the county to which the prisoner was transferred after conviction. It does not include the custody of a probationer, parolee or person on extended supervision by the department of corrections or a probation, extended supervision or parole officer or the custody of a person who has been released to aftercare supervision under ch. 938 unless the person is in actual custody or is subject to a confinement order under s. 973.09 (4).

(b) "Escape" means to leave in any manner without lawful permission or authority.

(c) "Legal arrest" includes without limitation an arrest pursuant to process fair on its face notwithstanding insubstantial irregularities and also includes taking a juvenile into custody under s. 938.19.

(2) A person in custody who intentionally escapes from custody under any of the following circumstances is guilty of a Class A misdemeanor:

(a) Pursuant to a legal arrest for or lawfully charged with or convicted of a violation of a statutory traffic regulation, a statutory offense for which the penalty is a forfeiture or a municipal ordinance.

(b) Lawfully taken into custody under s. 938.19 for a violation of or lawfully alleged or adjudged under ch. 938 to have violated a statutory traffic regulation, a statutory provision for which the penalty is a forfeiture or a municipal ordinance.

(c) Pursuant to a civil arrest or body execution.

(3) A person in custody who intentionally escapes from custody under any of the following circumstances is guilty of a Class H felony:

NOTE: Sub. (3) (intro.) is shown as amended eff. 2–1–03 by 2001 Wis. Act 109. Prior to 2–1–03 it reads:

(3) A person in custody who intentionally escapes from custody under any of the following circumstances is guilty of a Class D felony:

(a) Pursuant to a legal arrest for, lawfully charged with or convicted of or sentenced for a crime.

(b) Lawfully taken into custody under s. 938.19 for or lawfully alleged or adjudged under ch. 938 to be delinquent on the basis of a violation of a criminal law.

(c) Subject to a disposition under s. 938.34 (4d), (4h) or (4m), to a placement under s. 938.357 (4) or to aftercare revocation under s. 938.357 (5) (e).

(d) Subject to an order under s. 48.366.

(e) In custody under the circumstances described in sub. (2) and leaves the state to avoid apprehension. Leaving the state and failing to return is prima facie evidence of intent to avoid apprehension.

(f) Pursuant to a legal arrest as a fugitive from justice in another state.

(g) Committed to the department of health and family services under ch. 971 or 975.

(4) (a) Except as provided in par. (b), a court shall impose a sentence under this section consecutive to any sentence previously imposed or which may be imposed for any crime or offense for which the person was in custody when he or she escaped.

(b) If the person escaped while serving a sentence to the intensive sanctions program, a court may impose a sentence under this section concurrent to the sentence to the intensive sanctions program.

NOTE: Sub. (4) is repealed eff. 2–1–03 by 2001 Wis. Act 109.

History: 1971 c. 164 s. 89; 1975 c. 39; 1977 c. 173, 312, 354, 418; 1985 a. 320; 1987 a. 27, 238, 352; 1987 a. 403 ss. 238, 239, 256; 1989 a. 31; 1993 a. 16, 377, 385, 491; 1995 a. 27 ss. 7233m, 7233p, 9126 (19); 1995 a. 77, 154, 352, 390; 1997 a. 35, 283; 1999 a. 9; 2001 a. 109.

There is no denial of equal protection in the punishment under sub. (3) (d) [now (3) (g)] of persons committed under the sex crimes law when persons civilly committed are not subject to the same statute. *State v. Neutz*, 69 Wis. 2d 292, 230 N.W.2d 806 (1975).

A defendant's escape under the work–release statute was an escape under s. 946.42 (3). *Brown v. State*, 73 Wis. 2d 703, 245 N.W.2d 670 (1976).

Because an individual committed under ch. 975 has not been sentenced within the meaning of sub. (4), a sentence for an escape from commitment custody need not be served consecutive to the commitment. *State v. Hungerford*, 76 Wis. 2d 171, 251 N.W.2d 9 (1977).

The sentence for an escape conviction may be consecutive to a sex crime commitment. *State v. Kruse*, 101 Wis. 2d 387, 305 N.W.2d 85 (1981).

It is not necessary to leave the physical boundaries of an institution to complete an act of escape. *State v. Sugden*, 143 Wis. 2d 728, 422 N.W.2d 624 (1988).

Under sub. (5) (b) [now sub. (1) (a)], an individual is "in custody" once freedom of movement is restricted; one lawfully arrested may not leave without permission. *State v. Adams*, 152 Wis. 2d 68, 447 N.W.2d 90 (Ct. App. 1989).

A person can be "in custody" without being under "legal arrest," but a person cannot be under "legal arrest" without being "in custody." *State v. Hoffman*, 163 Wis. 2d 752, 472 N.W.2d 558 (Ct. App. 1991).

A traffic regulation under sub. (2) (a) does not include any offense punishable as a crime. *State v. Beasley*, 165 Wis. 2d 97, 477 N.W.2d 57 (Ct. App. 1991).

Upon conviction of a crime, a person is in custody regardless of physical control. Leaving without the court's granting release is escape. *State v. Scott*, 191 Wis. 2d 146, 528 N.W.2d 46 (Ct. App. 1995).

As used in sub. (1) (a), "medical care" includes treatment at drug and alcohol rehabilitation centers. *State v. Sevelin*, 204 Wis. 2d 127, 554 N.W.2d 521 (Ct. App. 1996).

Failure to return to jail while on work release from incarceration for failure to pay a municipal forfeiture is escape under this section. *State v. Smith*, 214 Wis. 2d 540, 571 N.W.2d 472 (Ct. App. 1997).

946.425 Failure to report to jail. (1) Any person who is subject to a series of periods of imprisonment under s. 973.03 (5) (b) and who intentionally fails to report to the county jail as required under the sentence is guilty of a Class H felony.

NOTE: Sub. (1) is shown as amended eff. 2–1–03 by 2001 Wis. Act 109. Prior to 2–1–03 it reads:

(1) Any person who is subject to a series of periods of imprisonment under s. 973.03 (5) (b) and who intentionally fails to report to the county jail as required under the sentence is guilty of a Class D felony.

(1m) (a) Any person who receives a stay of execution of a sentence of imprisonment of less than 10 days to a county jail under s. 973.15 (8) (a) and who intentionally fails to report to the county jail as required under the sentence is guilty of a Class A misdemeanor.

(b) Any person who receives a stay of execution of a sentence of imprisonment of 10 or more days to a county jail under s. 973.15 (8) (a) and who intentionally fails to report to the county jail as required under the sentence is guilty of a Class H felony.

NOTE: Par. (b) is shown as amended eff. 2–1–03 by 2001 Wis. Act 109. Prior to 2–1–03 it reads:

(b) Any person who receives a stay of execution of a sentence of imprisonment of 10 or more days to a county jail under s. 973.15 (8) (a) and who intentionally fails to report to the county jail as required under the sentence is guilty of a Class D felony.

(1r) (a) Any person who is subject to a confinement order under s. 973.09 (4) as the result of a conviction for a misdemeanor and who intentionally fails to report to the county jail or house of correction as required under the order is guilty of a Class A misdemeanor.

(b) Any person who is subject to a confinement order under s. 973.09 (4) as the result of a conviction for a felony and who intentionally fails to report to the county jail or house of correction as required under the order is guilty of a Class H felony.

NOTE: Par. (b) is shown as amended eff. 2–1–03 by 2001 Wis. Act 109. Prior to 2–1–03 it reads:

(b) Any person who is subject to a confinement order under s. 973.09 (4) as the result of a conviction for a felony and who intentionally fails to report to the county jail or house of correction as required under the order is guilty of a Class D felony.

(2) A court shall impose a sentence under this section consecutive to any sentence previously imposed or that may be imposed for any crime or offense for which the person was sentenced under s. 973.03 (5) (b) or 973.15 (8) (a), consecutive to any sentence that may apply to the person under s. 973.10 (2) or consecutive to any confinement order under s. 973.09 (4) previously issued by a court regarding the person.

NOTE: Sub. (2) is repealed eff. 2–1–03 by 2001 Wis. Act 109.

(3) A prosecutor may not charge a person with violating both subs. (1) and (1m) regarding the same incident or occurrence.

History: 1989 a. 85; 1993 a. 273; 1995 a. 154; 2001 a. 109.

Custody under sub. (1) (a) does not include the custody of a parole or probation officer. State v. Zimmerman, 2001 WI App 238, 248 Wis. 2d 370, 635 N.W.2d 864.

946.43 Assaults by prisoners. (1m) Any prisoner confined to a state prison or other state, county or municipal detention facility who intentionally does any of the following is guilty of a Class F felony:

NOTE: Sub. (1m) (intro.) is shown as amended eff. 2–1–03 by 2001 Wis. Act 109. Prior to 2–1–03 it reads:

(1m) Any prisoner confined to a state prison or other state, county or municipal detention facility who intentionally does any of the following is guilty of a Class C felony:

(a) Places an officer, employee, visitor or another inmate of such prison or institution in apprehension of an immediate battery likely to cause death or great bodily harm; or

(b) Confines or restrains an officer, employee, visitor or another inmate of such prison or institution without the person's consent.

(2m) (a) Any prisoner confined to a state prison or other state, county or municipal detention facility who throws or expels blood, semen, vomit, saliva, urine, feces or other bodily substance at or toward an officer, employee or visitor of the prison or facility or another prisoner of the prison or facility under all of the following circumstances is guilty of a Class I felony:

NOTE: Par. (a) (intro.) is shown as amended eff. 2–1–03 by 2001 Wis. Act 109. Prior to 2–1–03 it reads:

(a) Any prisoner confined to a state prison or other state, county or municipal detention facility who throws or expels blood, semen, vomit, saliva, urine, feces or other bodily substance at or toward an officer, employee or visitor of the prison or facility or another prisoner of the prison or facility under all of the following circumstances may be fined not more than \$10,000 or imprisoned for not more than 2 years or both:

1. The prisoner throws or expels the blood, semen, vomit, saliva, urine, feces or other bodily substance with the intent that it come into contact with the officer, employee, visitor or other prisoner.

2. The prisoner throws or expels the blood, semen, vomit, saliva, urine, feces or other bodily substance with the intent either to cause bodily harm to the officer, employee, visitor or other prisoner or to abuse, harass, offend, intimidate or frighten the officer, employee, visitor or other prisoner.

3. The officer, employee, visitor or other prisoner does not consent to the blood, semen, vomit, saliva, urine, feces or other bodily substance being thrown or expelled at or toward him or her.

(b) A court shall impose a sentence for a violation of par. (a) consecutive to any sentence previously imposed or which may be imposed for any crime or offense for which the person was in custody when he or she committed the violation of par. (a).

History: 1977 c. 173, 273; 1999 a. 188; 2001 a. 109.

946.44 Assisting or permitting escape. (1) Whoever does the following is guilty of a Class H felony:

NOTE: Sub. (1) (intro.) is shown as amended eff. 2–1–03 by 2001 Wis. Act 109. Prior to 2–1–03 it reads:

(1) Whoever does the following is guilty of a Class D felony:

(a) Any officer or employee of an institution where prisoners are detained who intentionally permits a prisoner in the officer's or employee's custody to escape; or

(b) Whoever with intent to aid any prisoner to escape from custody introduces into the institution where the prisoner is detained or transfers to the prisoner anything adapted or useful in making an escape.

(1g) Any public officer or public employee who violates sub. (1) (a) or (b) is guilty of a Class F felony.

NOTE: Sub. (1g) is shown as amended eff. 2–1–03 by 2001 Wis. Act 109. Prior to 2–1–03 it reads:

(1g) Any public officer or public employee who violates sub. (1) (a) or (b) is guilty of a Class C felony.

(1m) Whoever intentionally introduces into an institution where prisoners are detained or transfers to a prisoner any firearm, whether loaded or unloaded, or any article used or fashioned in a manner to lead another person to believe it is a firearm, is guilty of a Class F felony.

NOTE: Sub. (1m) is shown as amended eff. 2–1–03 by 2001 Wis. Act 109. Prior to 2–1–03 it reads:

(1m) Whoever intentionally introduces into an institution where prisoners are detained or transfers to a prisoner any firearm, whether loaded or unloaded, or any article used or fashioned in a manner to lead another person to believe it is a firearm, is guilty of a Class C felony.

(2) In this section:

(a) "Custody" has the meaning designated in s. 946.42 (1) (a).

(b) "Escape" has the meaning designated in s. 946.42 (1) (b).

(c) "Institution" includes a secured correctional facility, as defined in s. 938.02 (15m), a secured child caring institution, as defined in s. 938.02 (15g), a secured group home, as defined in s. 938.02 (15p), and a Type 2 child caring institution, as defined in s. 938.02 (19r).

(d) "Prisoner" includes a person who is under the supervision of the department of corrections under s. 938.34 (4h), who is placed in a secured correctional facility, a secured child caring institution or a secured group home under s. 938.183, 938.34 (4m) or 938.357 (4) or (5) (e), who is placed in a Type 2 child caring institution under s. 938.34 (4d) or who is subject to an order under s. 48.366.

History: 1977 c. 173; 1985 a. 320; 1987 a. 27, 236, 238, 403; 1989 a. 31, 107; 1993 a. 16, 377, 385, 486, 491; 1995 a. 27, 77, 352; 1999 a. 9; 2001 a. 109.

946.45 Negligently allowing escape. (1) Any officer or employee of an institution where prisoners are detained who, through his or her neglect of duty, allows a prisoner in his or her custody to escape is guilty of a Class B misdemeanor.

(2) In this section:

- (a) “Custody” has the meaning designated in s. 946.42 (1) (a).
- (b) “Escape” has the meaning designated in s. 946.42 (1) (b).
- (c) “Institution” includes a secured correctional facility, as defined in s. 938.02 (15m), a secured child caring institution, as defined in s. 938.02 (15g), a secured group home, as defined in s. 938.02 (15p), and a Type 2 child caring institution, as defined in s. 938.02 (19r).
- (d) “Prisoner” includes a person who is under the supervision of the department of corrections under s. 938.34 (4h), who is placed in a secured correctional facility, a secured child caring institution or a secured group home under s. 938.183, 938.34 (4m) or 938.357 (4) or (5) (e), who is placed in a Type 2 child caring institution under s. 938.34 (4d) or who is subject to an order under s. 48.366.

History: 1977 c. 173; 1985 a. 320; 1987 a. 27, 238; 1989 a. 31, 107; 1993 a. 16, 377, 385, 491; 1995 a. 27, 77, 352; 1999 a. 9.

946.46 Encouraging violation of probation, extended supervision or parole. Whoever intentionally aids or encourages a parolee, probationer or person on extended supervision or any person committed to the custody or supervision of the department of corrections or a county department under s. 46.215, 46.22 or 46.23 by reason of crime or delinquency to abscond or violate a term or condition of parole, extended supervision or probation is guilty of a Class A misdemeanor.

History: 1971 c. 164 s. 89; 1977 c. 173; 1989 a. 31, 107; 1993 a. 385; 1995 a. 27; 1997 a. 283.

946.47 Harboring or aiding felons. (1) Whoever does either of the following is guilty of a Class I felony:

NOTE: Sub. (1) (intro.) is shown as amended eff. 2–1–03 by 2001 Wis. Act 109. Prior to 2–1–03 it reads:

- (1) Whoever does either of the following is guilty of a Class E felony:
 - (a) With intent to prevent the apprehension of a felon, harbors or aids him or her; or
 - (b) With intent to prevent the apprehension, prosecution or conviction of a felon, destroys, alters, hides, or disguises physical evidence or places false evidence.

(2) As used in this section “felon” means either of the following:

- (a) A person who commits an act within the jurisdiction of this state which constitutes a felony under the law of this state; or
- (b) A person who commits an act within the jurisdiction of another state which is punishable by imprisonment for one year or more in a state prison or penitentiary under the law of that state and would, if committed in this state, constitute a felony under the law of this state.

(3) This section does not apply to the felon, to the felon’s spouse or to a parent, grandparent, child, grandchild, brother or sister of the felon, whether by blood, marriage or adoption.

History: 1977 c. 173; 1993 a. 486; 1999 a. 162; 2001 a. 109.

A person may be a “felon” under (2) (a) even though not convicted of felony. State v. Jones, 98 Wis. 2d 679, 298 N.W.2d 100 (Ct. App. 1980).

The application of this section is not restricted to persons wanted for conduct constituting a felony for which there has been no conviction, but also applies to persons previously convicted of a felony who are sought for other reasons. State v. Schmidt, 221 Wis. 2d 189 585 N.W.2d 16 (Ct. App. 1998).

946.48 Kidnapped or missing persons; false information. (1) Whoever sends, delivers, or causes to be transmitted to another any written or oral communication with intent to induce a false belief that the sender has knowledge of the whereabouts, physical condition, or terms imposed upon the return of a kidnapped or missing person is guilty of a Class H felony.

NOTE: Sub. (1) is shown as amended eff. 2–1–03 by 2001 Wis. Act 109. Prior to 2–1–03 it reads:

(1) Whoever sends, delivers, or causes to be transmitted to another any written or oral communication with intent to induce a false belief that the sender has

knowledge of the whereabouts, physical condition, or terms imposed upon the return of a kidnapped or missing person is guilty of a Class D felony.

(2) Violation of this section may be prosecuted in either the county where the communication was sent or the county in which it was received.

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

946.49 Bail jumping. (1) Whoever, having been released from custody under ch. 969, intentionally fails to comply with the terms of his or her bond is:

(a) If the offense with which the person is charged is a misdemeanor, guilty of a Class A misdemeanor.

(b) If the offense with which the person is charged is a felony, guilty of a Class H felony.

NOTE: Par. (b) is shown as amended eff. 2–1–03 by 2001 Wis. Act 109. Prior to 2–1–03 it reads:

(b) If the offense with which the person is charged is a felony, guilty of a Class D felony.

(2) A witness for whom bail has been required under s. 969.01 (3) is guilty of a Class I felony for failure to appear as provided.

NOTE: Sub. (2) is shown as amended eff. 2–1–03 by 2001 Wis. Act 109. Prior to 2–1–03 it reads:

(2) A witness for whom bail has been required under s. 969.01 (3) is guilty of a Class E felony for failure to appear as provided.

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

Under sub. (1), a charge underlying a bail-jumping charge is not a lesser-included offense, and punishment for both does not offend double-jeopardy protection. State v. Nelson, 146 Wis. 2d 442, 432 N.W.2d 115 (Ct. App. 1988).

Conviction under this section resulting from the conviction for another crime committed while released on bail does not constitute double jeopardy. State v. West, 181 Wis. 2d 792, 510 N.W.2d (Ct. App. 1993).

A defendant released without bail is not subject to a bond and cannot violate this section. State v. Dawson, 195 Wis. 2d 161, 536 N.W.2d 119 (Ct. App. 1995).

A court in sentencing a defendant for a violation of this section may take into account the underlying acts that resulted in the violation. State v. Schordie, 214 Wis. 2d 229, 570 N.W.2d 881 (Ct. App. 1997).

Charging a defendant with 2 counts of bail jumping when the defendant violated multiple conditions of a single bond was not multiplicitous. State v. Anderson, 219 Wis. 2d 740, 580 N.W.2d 329 (1998).

A positive urine test was sufficient to establish that the defendant intentionally violated the conditions of a bond prohibiting the use of illegal drugs. State v. Taylor, 226 Wis. 2d 490, 595 N.W.2d 56 (Ct. App. 1999).

When the meaning and scope of a bond condition is at issue for purposes of determining whether there is the basis for a criminal charge, the threshold question is whether the bond condition itself covers the defendant’s conduct in the case, and not whether the evidence plausibly establishes that the defendant believed that he or she was violating the condition. State v. Schaab, 2000 WI App 204, 238 Wis. 2d 598, 617 N.W.2d 872.

946.495 Violation of nonsecure custody order. If a person has been placed in nonsecure custody by an intake worker under s. 938.207 or by a judge or circuit court commissioner under s. 938.21 (4) and the person is alleged to be delinquent under s. 938.12, alleged to be in need of protection or services under s. 938.13 (12) or has been taken into custody for committing an act that is a violation of a state or federal criminal law, the person is guilty of a Class A misdemeanor if he or she intentionally fails to comply with the conditions of his or her placement in nonsecure custody.

History: 1997 a. 328; 2001 a. 61.

946.50 Absconding. Any person who is adjudicated delinquent, but who intentionally fails to appear before the court assigned to exercise jurisdiction under chs. 48 and 938 for his or her dispositional hearing under s. 938.335, and who does not return to that court for a dispositional hearing before attaining the age of 17 years is guilty of the following:

(1) A Class A felony, if the person was adjudicated delinquent for committing an act that would be a Class A felony if committed by an adult.

(2) A Class B felony, if the person was adjudicated delinquent for committing an act that would be a Class B felony if committed by an adult.

(3) A Class C felony, if the person was adjudicated delinquent for committing an act that would be a Class C felony if committed by an adult.

(4) A Class D felony, if the person was adjudicated delinquent for committing an act that would be a Class D felony if committed by an adult.

(5) A Class E felony, if the person was adjudicated delinquent for committing an act that would be a Class E felony if committed by an adult.

(5d) A Class F felony, if the person was adjudicated delinquent for committing an act that would be a Class F felony if committed by an adult.

NOTE: Sub. (5d) is created eff. 2–1–03 by 2001 Wis. Act 109.

(5h) A Class G felony, if the person was adjudicated delinquent for committing an act that would be a Class G felony if committed by an adult.

NOTE: Sub. (5h) is created eff. 2–1–03 by 2001 Wis. Act 109.

(5p) A Class H felony, if the person was adjudicated delinquent for committing an act that would be a Class H felony if committed by an adult.

NOTE: Sub. (5p) is created eff. 2–1–03 by 2001 Wis. Act 109.

(5t) A Class I felony, if the person was adjudicated delinquent for committing an act that would be a Class I felony if committed by an adult.

NOTE: Sub. (5t) is created eff. 2–1–03 by 2001 Wis. Act 109.

(6) A Class A misdemeanor, if the person was adjudicated delinquent for committing an act that would be a misdemeanor if committed by an adult.

History: 1995 a. 77; 2001 a. 109.

SUBCHAPTER V

OTHER CRIMES AFFECTING THE ADMINISTRATION OF GOVERNMENT

946.60 Destruction of documents subject to subpoena. (1) Whoever intentionally destroys, alters, mutilates, conceals, removes, withholds or transfers possession of a document, knowing that the document has been subpoenaed by a court or by or at the request of a district attorney or the attorney general, is guilty of a Class I felony.

NOTE: Sub. (1) is shown as amended eff. 2–1–03 by 2001 Wis. Act 109. Prior to 2–1–03 it reads:

(1) Whoever intentionally destroys, alters, mutilates, conceals, removes, withholds or transfers possession of a document, knowing that the document has been subpoenaed by a court or by or at the request of a district attorney or the attorney general, is guilty of a Class E felony.

(2) Whoever uses force, threat, intimidation or deception, with intent to cause or induce another person to destroy, alter, mutilate, conceal, remove, withhold or transfer possession of a subpoenaed document, knowing that the document has been subpoenaed by a court or by or at the request of a district attorney or the attorney general, is guilty of a Class I felony.

NOTE: Sub. (2) is shown as amended eff. 2–1–03 by 2001 Wis. Act 109. Prior to 2–1–03 it reads:

(2) Whoever uses force, threat, intimidation or deception, with intent to cause or induce another person to destroy, alter, mutilate, conceal, remove, withhold or transfer possession of a subpoenaed document, knowing that the document has been subpoenaed by a court or by or at the request of a district attorney or the attorney general, is guilty of a Class E felony.

(3) It is not a defense to a prosecution under this section that:

(a) The document would have been legally privileged or inadmissible in evidence.

(b) The subpoena was directed to a person other than the defendant.

History: 1981 c. 306; 2001 a. 109.

946.61 Bribery of witnesses. (1) Whoever does any of the following is guilty of a Class H felony:

NOTE: Sub. (1) (intro.) is shown as amended eff. 2–1–03 by 2001 Wis. Act 109. Prior to 2–1–03 it reads:

(1) Whoever does any of the following is guilty of a Class D felony:

(a) With intent to induce another to refrain from giving evidence or testifying in any civil or criminal matter before any court,

judge, grand jury, magistrate, court commissioner, referee or administrative agency authorized by statute to determine issues of fact, transfers to him or her or on his or her behalf, any property or any pecuniary advantage; or

(b) Accepts any property or any pecuniary advantage, knowing that such property or pecuniary advantage was transferred to him or her or on his or her behalf with intent to induce him or her to refrain from giving evidence or testifying in any civil or criminal matter before any court, judge, grand jury, magistrate, court commissioner, referee, or administrative agency authorized by statute to determine issues of fact.

(2) This section does not apply to a person who is charged with a crime, or any person acting in his or her behalf, who transfers property to which he or she believes the other is legally entitled.

History: 1977 c. 173; 1979 c. 175; 1993 a. 486; 2001 a. 109.

A conviction under this section cannot be sustained if the evidence shows that the defendant only transferred property to induce false testimony. *State v. Duda*, 60 Wis. 2d 431, 210 N.W.2d 763 (1973).

This section only prohibits paying a person to “refrain” from testifying and does not include influencing testimony. *State v. Manthey*, 169 Wis. 2d 673, 487 N.W.2d 44 (Ct. App. 1992).

946.64 Communicating with jurors. Whoever, with intent to influence any person, summoned or serving as a juror, in relation to any matter which is before that person or which may be brought before that person, communicates with him or her otherwise than in the regular course of proceedings in the trial or hearing of that matter is guilty of a Class I felony.

NOTE: This section is shown as amended eff. 2–1–03 by 2001 Wis. Act 109. Prior to 2–1–03 it reads:

946.64 Communicating with jurors. Whoever, with intent to influence any person, summoned or serving as a juror, in relation to any matter which is before that person or which may be brought before that person, communicates with him or her otherwise than in the regular course of proceedings in the trial or hearing of that matter is guilty of a Class E felony.

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

946.65 Obstructing justice. (1) Whoever for a consideration knowingly gives false information to any officer of any court with intent to influence the officer in the performance of official functions is guilty of a Class I felony.

NOTE: Sub. (1) is shown as amended eff. 2–1–03 by 2001 Wis. Act 109. Prior to 2–1–03 it reads:

(1) Whoever for a consideration knowingly gives false information to any officer of any court with intent to influence the officer in the performance of official functions is guilty of a Class E felony.

(2) “Officer of any court” includes the judge, reporter, bailiff and district attorney.

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

Only conduct that involves a 3rd-party contracting with another to give false information to a court officer in an attempt to influence the performance of the officer’s official function is proscribed by this section. *State v. Howell*, 141 Wis. 2d 58, 414 N.W.2d 54 (Ct. App. 1987).

946.66 False complaints of police misconduct. (1) In this section:

(a) “Complaint” means a complaint that is filed as part of a procedure established under s. 66.0511 (3).

(b) “Law enforcement officer” has the meaning given in s. 165.85 (2) (c).

(2) Whoever knowingly makes a false complaint regarding the conduct of a law enforcement officer is subject to a Class A forfeiture.

History: 1997 a. 176; 2001 a. 30.

946.67 Compounding crime. (1) Whoever receives any property in return for a promise, express or implied, to refrain from prosecuting a crime or to refrain from giving information bearing on the probable success of a criminal prosecution is guilty of a Class A misdemeanor.

(2) Subsection (1) does not apply if the act upon which the actual or supposed crime is based has caused a loss for which a civil action will lie and the person who has sustained such loss reasonably believes that he or she is legally entitled to the property received.

(3) No promise mentioned in this section shall justify the promisor in refusing to testify or to produce evidence against the alleged criminal when subpoenaed to do so.

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

946.68 Simulating legal process. (1g) In this section, “legal process” includes a subpoena, summons, complaint, warrant, injunction, writ, notice, pleading, order or other document that directs a person to perform or refrain from performing a specified act and compliance with which is enforceable by a court or governmental agency.

(1r) (a) Except as provided in pars. (b) and (c), whoever sends or delivers to another any document which simulates legal process is guilty of a Class I felony.

NOTE: Par. (a) is shown as amended eff. 2–1–03 by 2001 Wis. Act 109. Prior to 2–1–03 it reads:

(a) Except as provided in pars. (b) and (c), whoever sends or delivers to another any document which simulates legal process is guilty of a Class E felony.

(b) If the document under par. (a) is sent or delivered with intent to induce payment of a claim, the person is guilty of a Class H felony.

NOTE: Par. (b) is shown as amended eff. 2–1–03 by 2001 Wis. Act 109. Prior to 2–1–03 it reads:

(b) If the document under par. (a) is sent or delivered with intent to induce payment of a claim, the person is guilty of a Class D felony.

(c) If the document under par. (a) simulates any criminal process, the person is guilty of a Class H felony.

NOTE: Par. (c) is shown as amended eff. 2–1–03 by 2001 Wis. Act 109. Prior to 2–1–03 it reads:

(c) If the document under par. (a) simulates any criminal process, the person is guilty of a Class D felony.

(2) Proof that a document specified under sub. (1r) was mailed or was delivered to any person with intent that it be forwarded to the intended recipient is sufficient proof of sending.

(3) This section applies even though the simulating document contains a statement to the effect that it is not legal process.

(4) Violation of this section may be prosecuted in either the county where the document was sent or the county in which it was delivered.

History: 1977 c. 173; 1997 a. 27; 2001 a. 109.

946.69 Falsely assuming to act as a public officer or employee or a utility employee. (1) In this section, “utility” means any of the following:

(a) A public utility, as defined in s. 196.01 (5).

(b) A municipal power district, as defined in s. 198.01 (6).

(c) A cooperative association organized under ch. 185 to furnish or provide telecommunications service, gas, electricity, power or water.

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

NOTE: Sub. (2) (intro.) is shown as amended eff. 2–1–03 by 2001 Wis. Act 109. Prior to 2–1–03 it reads:

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

(a) Assumes to act in an official capacity or to perform an official function, knowing that he or she is not the public officer or public employee or the employee of a utility that he or she assumes to be.

(b) Exercises any function of a public office, knowing that he or she has not qualified so to act or that his or her right so to act has ceased.

History: 1977 c. 173; 1993 a. 146, 486; 1995 a. 225; 1997 a. 27; 2001 a. 109.

Sub. (1) is not unconstitutionally vague or overbroad. *State v. Wickstrom*, 118 Wis. 2d 339, 348 N.W.2d 183 (Ct. App. 1984).

946.70 Impersonating peace officers. (1) Except as provided in sub. (2), whoever impersonates a peace officer with intent to mislead others into believing that the person is actually a peace officer is guilty of a Class A misdemeanor.

(2) Any person violating sub. (1) with the intent to commit or aid or abet the commission of a crime other than the crime under this section is guilty of a Class H felony.

NOTE: Sub. (2) is shown as amended eff. 2–1–03 by 2001 Wis. Act 109. Prior to 2–1–03 it reads:

(2) Any person violating sub. (1) with the intent to commit or aid or abet the commission of a crime other than the crime under this section is guilty of a Class D felony.

History: 1977 c. 173; 1985 a. 97, 332; 2001 a. 109.

Cross-reference: See s. 125.105 for the offense of impersonating an employee of the department of revenue or the department of justice.

946.72 Tampering with public records and notices.

(1) Whoever with intent to injure or defraud destroys, damages, removes or conceals any public record is guilty of a Class H felony.

NOTE: Sub. (1) is shown as amended eff. 2–1–03 by 2001 Wis. Act 109. Prior to 2–1–03 it reads:

(1) Whoever with intent to injure or defraud destroys, damages, removes or conceals any public record is guilty of a Class D felony.

(2) Whoever intentionally damages, alters, removes or conceals any public notice, posted as authorized by law, before the expiration of the time for which the notice was posted, is guilty of a Class B misdemeanor.

History: 1977 c. 173; 1981 c. 335; 2001 a. 109.

946.73 Penalty for violating laws governing state or county institutions. Whoever violates any state law or any lawful rule made pursuant to state law governing state fair park or any state or county charitable, curative, reformatory, or penal institution while within the same or the grounds thereof is guilty of a Class C misdemeanor.

History: 1977 c. 173; 1993 a. 213, 215, 491.

946.74 Aiding escape from mental institutions. (1) Whoever intentionally does or attempts to do any of the following is guilty of a Class A misdemeanor:

(a) Aids any person committed to an institution for the care of the mentally ill, infirm or deficient to escape therefrom.

(b) Introduces into any institution for the care of the mentally ill, infirm or deficient, or transfers to any person committed to such institution, anything adapted or useful in making an escape therefrom, with intent to aid any person to escape.

(c) Removes from any institution for the care of the mentally ill, infirm or deficient any person committed thereto.

(2) Whoever violates sub. (1) with intent to commit a crime against sexual morality with or upon the inmate of the institution is guilty of a Class H felony.

NOTE: Sub. (2) is shown as amended eff. 2–1–03 by 2001 Wis. Act 109. Prior to 2–1–03 it reads:

(2) Whoever violates sub. (1) with intent to commit a crime against sexual morality with or upon the inmate of the institution is guilty of a Class D felony.

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

946.75 Denial of right of counsel. Whoever, while holding another person in custody and if that person requests a named attorney, denies that other person the right to consult and be advised by an attorney at law at personal expense, whether or not such person is charged with a crime, is guilty of a Class A misdemeanor.

History: 1977 c. 173.

946.76 Search warrant; premature disclosure. Whoever discloses prior to its execution that a search warrant has been applied for or issued, except so far as may be necessary to its execution, is guilty of a Class I felony.

NOTE: This section is shown as amended eff. 2–1–03 by 2001 Wis. Act 109. Prior to 2–1–03 it reads:

946.76 Search warrant; premature disclosure. Whoever discloses prior to its execution that a search warrant has been applied for or issued, except so far as may be necessary to its execution, is guilty of a Class E felony.

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

SUBCHAPTER VI

RACKETEERING ACTIVITY AND CONTINUING CRIMINAL ENTERPRISE

946.80 Short title. Sections 946.80 to 946.88 may be cited as the Wisconsin Organized Crime Control Act.

History: 1981 c. 280; 1989 a. 121.

RICO and WOCCA. Gegios and Jervis. Wis. Law. Apr. 1990.

946.81 Intent. The legislature finds that a severe problem is posed in this state by the increasing organization among certain criminal elements and the increasing extent to which criminal activities and funds acquired as a result of criminal activity are being directed to and against the legitimate economy of the state. The legislature declares that the intent of the Wisconsin Organized Crime Control Act is to impose sanctions against this subversion of the economy by organized criminal elements and to provide compensation to private persons injured thereby. It is not the intent of the legislature that isolated incidents of misdemeanor conduct be prosecuted under this act, but only an interrelated pattern of criminal activity the motive or effect of which is to derive pecuniary gain.

History: 1981 c. 280.

946.82 Definitions. In ss. 946.80 to 946.88:

(1) “Commission of a crime” means being concerned in the commission of a crime under s. 939.05.

(2) “Enterprise” means any sole proprietorship, partnership, limited liability company, corporation, business trust, union organized under the laws of this state or other legal entity or any union not organized under the laws of this state, association or group of individuals associated in fact although not a legal entity. “Enterprise” includes illicit and licit enterprises and governmental and other entities.

(3) “Pattern of racketeering activity” means engaging in at least 3 incidents of racketeering activity that have the same or similar intents, results, accomplices, victims or methods of commission or otherwise are interrelated by distinguishing characteristics, provided at least one of the incidents occurred after April 27, 1982 and that the last of the incidents occurred within 7 years after the first incident of racketeering activity. Acts occurring at the same time and place which may form the basis for crimes punishable under more than one statutory provision may count for only one incident of racketeering activity.

(4) “Racketeering activity” means any activity specified in 18 USC 1961 (1) in effect as of April 27, 1982 or the attempt, conspiracy to commit, or commission of any of the felonies specified in: chs. 945 and 961 and ss. 49.49, 134.05, 139.44 (1), 180.0129, 181.0129, 185.825, 201.09 (2), 215.12, 221.0625, 221.0636, 221.0637, 221.1004, 551.41, 551.42, 551.43, 551.44, 553.41 (3) and (4), 553.52 (2), 940.01, 940.19 (4) to (6), 940.20, 940.201, 940.203, 940.21, 940.30, 940.305, 940.31, 941.20 (2) and (3), 941.26, 941.28, 941.298, 941.31, 941.32, 942.09, 943.01 (2), (2d), or (2g), 943.011, 943.012, 943.013, 943.02, 943.03, 943.04, 943.05, 943.06, 943.10, 943.20 (3) (bf) to (e), 943.201, 943.23 (1g), (2) and (3), 943.24 (2), 943.25, 943.27, 943.28, 943.30, 943.32, 943.34 (1) (bf), (bm), and (c), 943.38, 943.39, 943.40, 943.41 (8) (b) and (c), 943.50 (4) (bf), (bm), and (c), 943.60, 943.70, 943.76, 944.21 (5) (c) and (e), 944.32, 944.33 (2), 944.34, 945.03 (1m), 945.04 (1m), 945.05 (1), 945.08, 946.10, 946.11, 946.12, 946.13, 946.31, 946.32 (1), 946.48, 946.49, 946.61, 946.64, 946.65, 946.72, 946.76, 947.015, 948.05, 948.08, 948.12, and 948.30.

NOTE: Sub. (4) is shown as affected by two acts of the 2001 legislature, eff. 2–1–03, and as merged by the revisor under s. 13.93 (2) (c). Prior to 2–1–03 it reads:

(4) “Racketeering activity” means any activity specified in 18 USC 1961 (1) in effect as of April 27, 1982 or the attempt, conspiracy to commit, or commission of any of the felonies specified in: chs. 945 and 961 and ss. 49.49, 134.05, 139.44 (1), 180.0129, 181.0129, 185.825, 201.09 (2), 215.12, 221.0625, 221.0636, 221.0637, 221.1004, 551.41, 551.42, 551.43, 551.44, 553.41 (3) and (4), 553.52 (2), 940.01, 940.19 (3) to (6), 940.20, 940.201, 940.203, 940.21, 940.30, 940.305, 940.31, 941.20 (2) and (3), 941.26, 941.28, 941.298, 941.31, 941.32, 942.09, 943.01 (2), (2d), or (2g), 943.011, 943.012, 943.013, 943.02, 943.03, 943.04, 943.05, 943.06, 943.10, 943.20 (3) (c) and (d), 943.201, 943.23 (1g), (1m), (1r), (2) and (3), 943.24 (2), 943.25, 943.27, 943.28, 943.30, 943.32, 943.34 (1) (c), 943.38, 943.39, 943.40, 943.41 (8) (b) and (c), 943.50 (4) (c), 943.60, 943.70, 943.76, 944.21 (5) (c) and (e), 944.32, 944.33 (2), 944.34, 945.03 (1m), 945.04 (1m), 945.05 (1), 945.08,

946.10, 946.11, 946.12, 946.13, 946.31, 946.32 (1), 946.48, 946.49, 946.61, 946.64, 946.65, 946.72, 946.76, 947.015, 948.05, 948.08, 948.12, and 948.30.

History: 1981 c. 280; 1983 a. 438; 1985 a. 104; 1985 a. 236 s. 15; 1987 a. 266 s. 5; 1987 a. 332, 348, 349, 403; 1989 a. 121, 303; 1991 a. 32, 39, 189; 1993 a. 50, 92, 94, 112, 280, 441, 491; 1995 a. 133, 249, 336, 448; 1997 a. 35, 79, 101, 140, 143, 252; 1999 a. 9, 150; 2001 a. 16, 105, 109; s. 13.93 (2) (c).

The definition of “pattern of racketeering” is not unconstitutionally vague. The definition of “enterprise” is discussed. *State v. O’Connell*, 179 Wis. 2d 598, 508 N.W.2d 23 (Ct. App. 1993).

Repeated use of illegally copied computer software did not constitute a pattern of racketeering. *Management Computer Services v. Hawkins*, 196 Wis. 2d 578, 539 N.W.2d 111 (Ct. App. 1995).

WOCCA does not require proof of intent or knowledge beyond that required for the underlying predicate offense. *State v. Mueller*, 201 Wis. 2d 121, 549 N.W.2d 455 (Ct. App. 1996).

The analysis for a “pattern of racketeering activity” under WOCCA is the same as under RICO. *Brunswick Corp. v. E.A. Doyle Mfg. Co.* 770 F. Supp. 1351 (1991).

946.83 Prohibited activities. (1) No person who has received any proceeds with knowledge that they were derived, directly or indirectly, from a pattern of racketeering activity may use or invest, whether directly or indirectly, any part of the proceeds or the proceeds derived from the investment or use thereof in the acquisition of any title to, or any right, interest, or equity in, real property or in the establishment or operation of any enterprise.

(2) No person, through a pattern of racketeering activity, may acquire or maintain, directly or indirectly, any interest in or control of any enterprise or real property.

(3) No person employed by, or associated with, any enterprise may conduct or participate, directly or indirectly, in the enterprise through a pattern of racketeering activity.

History: 1981 c. 280.

Sub. (3) requires that the person be separate from the enterprise; as matter of law, an individual is separate from a solely-owned enterprise if it is a corporation. *State v. Judd*, 147 Wis. 2d 398, 433 N.W.2d 260 (Ct. App. 1988).

946.84 Penalties. (1) Any person convicted of engaging in racketeering activity in violation of s. 946.83 is guilty of a Class E felony.

NOTE: Sub. (1) is shown as amended eff. 2–1–03 by 2001 Wis. Act 109. Prior to 2–1–03 it reads:

(1) Any person convicted of engaging in racketeering activity in violation of s. 946.83 is guilty of a Class C felony.

(2) In lieu of a fine under sub. (1), any person convicted of engaging in conduct in violation of s. 946.83, through which he or she derived pecuniary value, or by which he or she caused personal injury or property damage or other loss, may be fined not to exceed 2 times the gross value gained or 2 times the gross loss caused, whichever is the greater, plus court costs and the costs of investigation and prosecution, reasonably incurred. In calculating the amount of fine based on personal injury, any measurement of pain and suffering shall be excluded.

(3) The court shall hold a hearing to determine the amount of the fine authorized by sub. (2).

(4) In sub. (2), “pecuniary value” means:

(a) Anything of value in the form of money, a negotiable instrument, or a commercial interest or anything else the primary significance of which is economic advantage; or

(b) Any other property or service that has a value in excess of \$100.

History: 1981 c. 280, 391; 2001 a. 109.

946.85 Continuing criminal enterprise. (1) Any person who engages in a continuing criminal enterprise is guilty of a Class E felony.

NOTE: Sub. (1) is shown as amended eff. 2–1–03 by 2001 Wis. Act 109. Prior to 2–1–03 it reads:

(1) Any person who engages in a continuing criminal enterprise shall be imprisoned for not less than 10 years nor more than 30 years, and fined not more than \$10,000 or as provided in s. 946.84 (2). If the court imposes a sentence less than the presumptive minimum sentence, it shall place its reasons for doing so on the record.

(2) In this section a person is considered to be engaged in a continuing criminal enterprise, if he or she engages in a prohibited activity under s. 946.83, and:

(a) The activity is undertaken by the person in concert with 5 or more other persons, each of whom acted with intent to commit

a crime and with respect to whom the person occupies a supervisory position; and

(b) The person obtains gross income or resources in excess of \$25,000 from the activity.

History: 1981 c. 280; 1997 a. 283; 2001 a. 109.

There are 3 separate offenses chargeable under sec. 946.85, each requiring proof of a fact the others do not; prosecution of continuing criminal enterprise violations and the predicate offenses does not violate double jeopardy. *State v. Evers*, 163 Wis. 2d 725, 472 N.W.2d 828 (Ct. App. 1991).

946.86 Criminal forfeitures. (1) In addition to the penalties under ss. 946.84 and 946.85, the court shall order forfeiture, according to the procedures set forth in subs. (2) to (4), of all real or personal property used in the course of, or intended for use in the course of, derived from or realized through conduct in violation of s. 946.83 or 946.85. All forfeitures under this section shall be made with due provision for the rights of innocent persons. Property constituting proceeds derived from conduct in violation of s. 946.83 or 946.85 includes, but is not limited to, any of the following:

(a) Any position, office, appointment, tenure, commission or employment contract of any kind that the defendant acquired or maintained in violation of s. 946.83 or 946.85, through which the defendant conducted or participated in the conduct of the affairs of an enterprise in violation of s. 946.83 or 946.85, or that afforded the defendant a source of influence or control over the affairs of an enterprise that the defendant exercised in violation of s. 946.83 or 946.85.

(b) Any compensation, right or benefit derived from a position, office, appointment, tenure, commission or employment contract that accrued to the defendant during the period of conduct in violation of s. 946.83 or 946.85.

(c) Any interest in, security of, claim against or property or contractual right affording the defendant a source of influence or control over the affairs of an enterprise in which the defendant participated in violation of s. 946.83 or 946.85.

(d) Any amount payable or paid under any contract for goods or services that was awarded or performed in violation of s. 946.83 or 946.85.

(2) Any criminal complaint alleging violation of s. 946.83 or 946.85 shall allege the extent of property subject to forfeiture under this section. At trial, the trier of fact shall return a special verdict determining the extent of property, if any, to be subject to forfeiture under this section. When a special verdict contains a finding of property subject to a forfeiture under this section, a judgment of criminal forfeiture shall be entered along with the judgment of conviction under s. 972.13.

(3) If any property included in a special verdict of criminal forfeiture cannot be located, has been sold to a bona fide purchaser for value, has been placed beyond the jurisdiction of the court, has been substantially diminished in value by the conduct of the defendant, has been commingled with other property that cannot be divided without difficulty or undue injury to innocent persons or is otherwise unreachable without undue injury to innocent persons, the court may order forfeiture of any other property of the defendant up to the value of the property that is unreachable.

(4) Any injured person has a right or claim to forfeited property or the proceeds derived therefrom superior to any right or claim the state has under this section in the same property or proceeds. This subsection does not grant the injured person priority over state claims or rights by reason of a tax lien or other basis not covered by ss. 946.80 to 946.88. All rights, titles and interest in property described in sub. (1) vest in the state upon the commission of the act giving rise to forfeiture under this section.

History: 1989 a. 121.

946.87 Civil remedies. (1) After making due provision for the rights of innocent persons, any circuit court may enjoin violations of s. 946.83 or 946.85 and may issue appropriate orders and judgments related thereto, including, but not limited to:

(a) Ordering any defendant to divest himself or herself of any interest in any enterprise which is involved in the violation of s. 946.83 or 946.85, including real property.

(b) Imposing reasonable restrictions upon the future activities or investments of any defendant related to enjoining violations of s. 946.83 or 946.85, including, but not limited to, prohibiting any defendant from engaging in the same type of endeavor as the enterprise in which he or she was engaged in violation of s. 946.83 or 946.85.

(c) Ordering the dissolution or reorganization of any related enterprise.

(d) Ordering the suspension or revocation of a license, permit or prior approval granted to any related enterprise by any agency of the state, county or municipality.

(e) Ordering the dissolution of a corporation organized under ch. 180 or 181, or the revocation of a certificate authorizing a foreign corporation to conduct business within the state, upon finding that the board of directors or a managerial agent acting on behalf of the corporation, in conducting the affairs of the corporation, has authorized or engaged in conduct in violation of s. 946.83 or 946.85 and that, for the prevention of future criminal activity, the public interest requires the action under this paragraph.

(2) (a) All property, real or personal, including money, used in the course of, intended for use in the course of, derived from, or realized through, conduct which has resulted in a conviction for violation of s. 946.83 or 946.85 is subject to civil forfeiture to the state. The state shall dispose of all forfeited property as soon as commercially feasible. If property is not exercisable or transferable for value by the state, it shall expire. All forfeitures or dispositions under this section shall be made with due provision for the rights of innocent persons. The proceeds realized from the forfeitures and dispositions shall be deposited in the school fund.

(am) Notwithstanding par. (a), property described in par. (a) is subject to forfeiture if the person who violated s. 946.83 or 946.85 has not been convicted, but he or she is a defendant in a criminal proceeding, is released, pending trial, on bail, as defined in s. 969.001, and fails to appear in court regarding the criminal proceeding. However, before making the final determination of any action under this section, the court must determine that the party bringing the action can prove the person committed the violation of s. 946.83 or 946.85.

(b) Any injured person has a right or claim to forfeited property or the proceeds derived therefrom superior to any right or claim the state has under this section in the same property or proceeds. This paragraph does not grant the person priority over state claims or rights by reason of a tax lien or other basis not covered by ss. 946.80 to 946.88.

(3) The attorney general or any district attorney may institute civil proceedings under this section. Notwithstanding s. 59.42 (2) (b) 4., in counties having a population of 500,000 or more, the district attorney or the corporation counsel may proceed under this section. A corporation counsel in a county having a population of 500,000 or more or a district attorney may institute proceedings under this section only with the prior written approval of the attorney general. In any action brought under this section, the circuit court shall proceed as soon as practicable to the hearing and determination. Pending final determination of any action under this section, the circuit court may at any time enter such injunctions, prohibitions or restraining orders or take such actions, including the acceptance of satisfactory performance bonds, as the court deems proper. At any time pending final determination of a forfeiture action under sub. (2), the circuit court may order the seizure of property subject to forfeiture and may make such orders as it deems necessary to preserve and protect the property.

(4) Any person who is injured by reason of any violation of s. 946.83 or 946.85 has a cause of action for 2 times the actual damages sustained and, when appropriate, punitive damages. The person shall also recover attorney fees and costs of the investigation

and litigation reasonably incurred. The defendant or any injured person may demand a trial by jury in any civil action brought under this section.

(5) The burden of proof under this section is that of satisfying or convincing to a reasonable certainty by a greater weight of the credible evidence that the property is subject to forfeiture under this section.

(6) A final judgment or decree rendered in favor of the state in any criminal proceeding under ss. 946.80 to 946.88 shall stop the defendant from denying the essential allegations of the criminal offense in any subsequent civil action or proceeding.

History: 1981 c. 280; 1989 a. 121 ss. 108, 110m; Stats. 1989 s. 946.87; 1993 a. 280; 1995 a. 201.

State courts have concurrent jurisdiction over federal civil RICO actions. *Tafflin v. Levitt*, 493 U.S. 455, 107 L. Ed. 2d 887 (1990).

A WOCCA double damage civil action is penal in nature and does not survive the death of a defendant, but a claim against the deceased defendant's employee does survive. *Schimpf v. Gerald, Inc.* 2 F. Supp. 2d 1750 (1998).

Reaching deep pocket under RICO. *Poker*. 72 MLR 511 (1989).

946.88 Enforcement and jurisdiction. (1) A criminal or civil action or proceeding under ss. 946.80 to 946.88 may be commenced at any time within 6 years after a violation under ss.

946.80 to 946.88 terminates or the cause of action accrues. If a criminal action or proceeding under ss. 946.80 to 946.88 is brought, or intervened in, to punish, prevent or restrain any such violation, the running of the period of limitations with respect to any civil action or proceeding, including an action or proceeding under s. 946.87, which is based in whole or in part upon any matter complained of in the criminal action or proceeding shall be suspended for 2 years following the termination of the criminal action or proceeding.

(2) The application of one civil or criminal remedy under ss. 946.80 to 946.88 does not preclude the application of any other remedy, civil or criminal, under ss. 946.80 to 946.88 or any other provision of law. Civil remedies under ss. 946.80 to 946.88 are supplemental, and not mutually exclusive, except the state may not proceed under both ss. 946.84 (2) and 946.87 (4).

(3) The attorney general and the district attorneys of this state have concurrent authority to institute criminal proceedings under ss. 946.80 to 946.88, except a district attorney may institute proceedings only with the prior written approval of the attorney general.

History: 1981 c. 280; 1989 a. 121 s. 110; Stats. 1989 s. 946.88.