CHAPTER 946

CRIMES AGAINST GOVERNMENT AND ITS ADMINISTRATION

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Cross−reference: See definitions in s. 939.22.

SUBCHAPTER I

TREASON AND DISLOYAL ACTS

946.01 Treason. (1) Any person owing allegiance to this state who does any of the following is guilty of a Class A felony:

(a) Levies war against this state; or

(b) Adheres to the enemies of this state, giving them aid and comfort.

(2) No person may be convicted of treason except on the testimony of 2 witnesses to the same overt act, or on the person's confession in open court.

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

946.02 Sabotage. (1) Whoever does any of the following is guilty of a Class F felony:

(a) Intentionally damages, interferes with, or tampers with any property with reasonable grounds to believe that his or her act will hinder, delay, or interfere with the prosecution of war or other military action or the preparation for defense, war, or other military action by the United States or its allies; or

(b) Intentionally makes a defective article or on inspection omits to note any defect in an article with reasonable grounds to believe that such article is intended to be used in the prosecution of war or other military action or the preparation for defense, war, or other military action by the United States or its allies.

(2) Nothing in this section shall be construed to impair, curtail, or destroy the rights of employees and their representatives to self−organization, to form, join or assist labor organization, to strike, to bargain collectively through representatives of their own choosing, or to engage in lawful concerted activities for the purpose of collective bargaining or other mutual aid or protection under any state or federal statutes regulating labor relations.

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

946.03 Sedition. (1) Whoever does any of the following is guilty of a Class F felony:

(a) Attempts the overthrow of the government of the United States or this state by the use or threat of physical violence; or

(b) Is a party to a conspiracy with or a solicitation of another to overthrow the government of the United States or this state by the use or threat of physical violence; or

(c) Advocates or teaches 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

(d) Organizes or assists in the organization of 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.

(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 I felony.

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" means anything that 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.

History: 1977 c. 173; 2003 a. 243.

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:

(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:

(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" means anything of value not available to the general public, but does not include compensation or fringe benefits provided as a result of employment by a public utility to a regular employee or pensioner when the following conditions are satisfied:

1. The regular employee or pensioner is not compensated specifically for services performed for a purpose related to the election or nomination for election of an individual to state or local office, the recall from or retention in office of an individual holding a state or local office, or for the purpose of payment of expenses incurred as a result of a recount at an election.

2. The regular employee or pensioner is not compensated in excess of that provided to other regular employees or pensioners of like status.

(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; 2015 a. 117; s. 35.17 correction in (2) (a).

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:

(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 oth-

ers 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 who is 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).

Sub. (3) is not unconstitutionally vague. It does not fail to give notice that hiring and directing staff to work on political campaigns on state time with state resources is a violation. A legislator's duty under this section may be determined by reference to a variety of sources including the Senate Policy Manual, applicable statutes, and legislative rules and guidelines. The Senate Policy Manual and senate guidelines restricted political campaigning with public resources. State v. Chvala, 2004 WI App 53, 271 Wis. 2d 115, 678 N.W.2d 880, 03−0442.

Affirmed. 2005 WI 30, 279 Wis. 2d 216, 693 N.W.2d 747, 03−0442.

See also State v. Jensen, 2004 WI App 89, 272 Wis. 2d 707, 684 N.W.2d 136, 03−0106.

Affirmed. 2005 WI 31, 279 Wis. 2d 220, 694 N.W.2d 56, 03−0106.

Sub. (3) regulates conduct and not speech and is not subject to an overbreadth challenge under the 1st amendment. Legislators or their employees are not prohibited from doing or saying anything related to participation in political campaigns so long as they do not use state resources for that purpose. Legitimate legislative activity is not constrained by this statute. The line between "legislative activity" and "political activity" is sufficiently clear to prevent any confusion as to what conduct is prohibited under this statute. State v. Chvala, 2004 WI App 53, 271 Wis. 2d 115, 678 N.W.2d 880, 03−0442.

Affirmed. 2005 WI 30, 279 Wis. 2d 216, 693 N.W.2d 747, 03−0442.

See also State v. Jensen, 2004 WI App 89, 272 Wis. 2d 707, 684 N.W.2d 136, 03−0106.

Affirmed. 2005 WI 31, 279 Wis. 2d 220, 694 N.W.2d 56, 03−0106.

Enforcement of sub. (3) against a legislator does not violate the separation of powers doctrine. Enforcement does not require the courts to enforce legislative rules governing the enactment of legislation. Rather, the courts are asked to enforce a penal statute that relates to the duties of a legislator. A court may interpret an internal legislative rule to determine criminal liability if, when applied to the facts of the specific case, the rule is not ambiguous. State v. Chvala, 2004 WI App 53, 271 Wis. 2d 115, 678 N.W.2d 880, 03−0442.

Affirmed. 2005 WI 30, 279 Wis. 2d 216, 693 N.W.2d 747, 03−0442.

See also State v. Jensen, 2004 WI App 89, 272 Wis. 2d 707, 684 N.W.2d 136, 03−0106.

Affirmed. 2005 WI 31, 279 Wis. 2d 220, 694 N.W.2d 56, 03−0106.

Sub. (3) provides, as separate elements of the crime, the requirement that the conduct be inconsistent with the duties of one's office and the requirement that the conduct be done with intent to obtain a dishonest advantage. Although both elements may be proved through the same transaction, there must nevertheless be proof as to both elements. The state is required to prove beyond a reasonable doubt that the defendant exercised his or her discretionary power with the purpose to obtain a dishonest advantage. Guilt of misconduct in office does not require the defendant to have acted corruptly. State v. Jensen, 2007 WI App 256, 06−2095. See also State v. Schultz, 2007 WI App 257, 306 Wis. 2d 598, 743 N.W.2d 823, 06−2121.

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:

(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 s. 91.13, 2007 stats., or s. 91.60 or subch. IX of ch. 71, 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 percent 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 percent 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.

(12) (a) In this subsection, "research company" means an entity engaged in commercial activity that is related to research conducted by an employee or officer of the University of Wisconsin System or to a product of such research.

(b) Subsection (1) does not apply to a contract between a research company and the University of Wisconsin System or any institution or college campus within the system for purchase of goods or services, including research, if the following apply:

1. The contract is approved by a University of Wisconsin System employee or officer responsible for evaluating and managing potential conflicts of interest.

2. Either of the following apply:

a. The contract together with all other contracts between the same parties require less than $250,000 in payments over a 24−month period.

b. The University of Wisconsin System submits the contract to the University of Wisconsin Board of Regents and, within 45 days, the University of Wisconsin Board of Regents does not notify the University of Wisconsin System that entering the contract would constitute a violation of sub. (1).

(c) Paragraphs (a) and (b) apply regardless of the date on which a contract was entered into.

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; 2005 a. 417; 2009 a. 28.

A county board member did not violate sub. (1) by accepting a job as airport manager while he was serving as a county board member for a county that was co−owner of the airport when 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. It does not include 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 have negotiated in his private capacity for, a position that had not yet been posted. State v. Venema, 2002 WI App 202, 257 Wis. 2d. 491, 650 N.W.2d 898, 01−2502.

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 [now Technical college] may not bid on and contract for the construction of a building project for a vocational−technical district that would entail expenditures exceeding $2,000 in any year, when availability of federal funds for use on such project is subject to his approval as a member of the 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.

This section applies to county board or department purchases aggregating more than $5,000 from a county supervisor−owned business. 76 Atty. Gen. 178.

When the village board administers a community development block grant program, a member of the village board would violate this section if he or she obtained a loan in excess of $5,000 under the program. Acting as a private contractor, the board member would violate sub. (1) if he contracted to perform the construction work for a 3rd person who obtained a loan under the program. 76 Atty. Gen. 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.

A municipality's zoning decision is not a contract under sub. (1) (a) and therefore the statute does not apply to an official's participation in a zoning decision. OAG 9−14.

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.

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 that is subject to s. 16.856 or 84.062 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 s. 16.856 or 84.062, or who reduces the hourly basic rate of pay normally paid to an employee for work on a project that is not subject to s. 16.856 or 84.062 during a week in which the employee works both on a project that is subject to s. 16.856 or 84.062 and on a project that is not subject to s. 16.856 or 84.062, is guilty of a Class I felony.

(2) Any person employed pursuant to a public contract, as defined in s. 66.0901 (1) (c), or employed on a project that is subject to s. 16.856 or 84.062 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 s. 16.856 or 84.062, or who gives up any part of the compensation to which he or she is normally entitled for work on a project that is not subject to s. 16.856 or 84.062 during a week in which the person works part−time on a project that is subject to s. 16.856 or 84.062 and part−time on a project that is not subject to s. 16.856 or 84.062, 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 that is subject to s. 16.856 or 84.062 to permit any part of the wages to which that person is entitled under s. 16.856 or 84.062 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 3142.

(4) Any person employed on a project that is subject to s. 16.856 or 84.062 who permits any part of the wages to which that person is entitled under s. 16.856 or 84.062 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 3142.

History: 1979 c. 269; 1995 a. 27 s. 9130 (4); 1995 a. 215; 1997 a. 3; 1999 a. 150, 167; 2001 a. 30, 109; 2009 a. 28; 2011 a. 32; 2015 a. 55.

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:

(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 sub. (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), 95−0635.

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), 99−0129.

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 attention 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, 98−3519.

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:

(a) Under oath or affirmation or upon signing a statement pursuant to s. 887.015 makes or subscribes a false statement which he or she does not believe is true, when such oath, affirmation, or statement 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 or upon signing a statement pursuant to s. 887.015 in regard to any matter respecting which an oath, affirmation, or statement 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 or upon signing a statement pursuant to s. 887.015 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; 2009 a. 166.

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 in 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), 95−0141.

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), 95−0141.

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 this section. 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) Except as provided in subs. (2m) and (2r), 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.

(c) "Soft tissue injury" means an injury that requires medical attention to a tissue that connects, supports, or surrounds other structures and organs of the body and includes tendons, ligaments, fascia, skin, fibrous tissues, fat, synovial membranes, muscles, nerves, and blood vessels.

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

(2r) Whoever violates sub. (1) and causes substantial bodily harm or a soft tissue injury to an officer is guilty of a Class H felony.

(2t) Whoever violates sub. (1) and causes great bodily harm to an officer is guilty of a Class G felony.

(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; 2009 a. 251; 2011 a. 74.

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 187 (1996), 94−1045.

There is no exculpatory denial exception under this section. The statute criminalizes all false statements knowingly made and with intent to mislead the police. The state should have sound reasons for believing that a defendant knowingly made false statements with intent to mislead the police and not out of a good−faith attempt to defend against accusations of a crime. The latter can never include the former. State v. Reed, 2005 WI 53, 280 Wis. 2d 68, 695 N.W.2d 315, 03−1781.

"Lawful authority," as that term is used in sub. (1), requires that police conduct be in compliance with both the federal and state constitutions, in addition to any applicable statutes. State v. Ferguson, 2009 WI 50, 317 Wis. 2d 586, 767 N.W.2d 187, 07−2095.

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:

(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, 99−0418.

946.42 Escape. (1) In this section:

(a) 1. "Custody" includes without limitation all of the following:

a. Actual custody of an institution, including a juvenile correctional facility, as defined in s. 938.02 (10p), a secured residential care center for children and youth, as defined in s. 938.02 (15g), a juvenile detention facility, as defined in s. 938.02 (10r), a Type 2 residential care center for children and youth, as defined in s. 938.02 (19r), a facility used for the detention of persons detained under s. 980.04 (1), a facility specified in s. 980.065, or a juvenile portion of a county jail.

b. Actual custody of a peace officer or institution guard.

bm. Actual custody or authorized physical control of a correctional officer.

c. Actual custody or authorized physical control of a probationer, parolee, or person on extended supervision by the department of corrections.

e. Constructive custody of persons placed on supervised release under ch. 980.

f. Constructive custody of prisoners and juveniles subject to an order under s. 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.

g. Custody of the sheriff of the county to which the prisoner was transferred after conviction.

h. Custody of a person subject to a confinement order under s. 973.09 (4).

2. "Custody" does not include the constructive custody of a probationer, parolee, or person on extended supervision by the department of corrections or a probation, extended supervision, or parole agent or, subject to s. 938.533 (3) (a), the constructive custody of a person who has been released to community supervision or aftercare supervision under ch. 938.

NOTE: Subd. 2. is shown as amended eff. 7−1−17, or on the 2nd day after publication of the 2017−19 biennial budget act, whichever is later, by 2015 Wis. Act 55. Prior to that date it reads:

2. "Custody" does not include the constructive custody of a probationer, parolee, or person on extended supervision by the department of corrections or a probation, extended supervision, or parole agent or the constructive custody of a person who has been released to aftercare supervision under ch. 938.

(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.

(2m) A person who is in the custody of a probation, parole, or extended supervision agent, or a correctional officer, based on an allegation or a finding that the person violated the rules or conditions of probation, parole, or extended supervision and who intentionally escapes from custody is guilty of a Class H felony.

(3) A person in custody who intentionally escapes from custody under any of the following circumstances is guilty of a Class H 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 938.533 (3) (a), or to community supervision or aftercare revocation under s. 938.357 (5) (e).

NOTE: Par. (c) is shown as amended eff. 7−1−17, or on the 2nd day after publication of the 2017−19 biennial budget act, whichever is later, by 2015 Wis. Act 55. Prior to that date it reads:

(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).

(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 services under ch. 971 or 975.

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

(a) While subject to a detention order under s. 980.04 (1) or a custody order under s. 980.04 (3).

(b) While subject to an order issued under s. 980.06 committing the person to custody of the department of health services, regardless of whether the person is placed in institutional care or on supervised release.

(4) If a person is convicted of an escape under this section, the maximum term of imprisonment for the escape may be increased

by not more than 5 years if an individual who had custody of the person who escaped is injured during the course of the escape.

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; 2005 a. 344, 434; 2007 a. 20 s. 9121 (6) (a); 2007 a. 97, 226; 2013 a. 334; 2015 a. 55.

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).

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), 96−0729.

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 541, 571 N.W.2d 472 (Ct. App. 1997), 97−0266.

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, 00−3173.

Detention at the Wisconsin Resource Center while awaiting evaluation and trial on a petition for commitment as a sexually violent person under Chapter 980 does not subject the detainee to escape charges under this section. Thorson v. Schwarz, 2004 WI 96, 274 Wis. 2d 1, 681 N.W.2d 914, 02−3380.

Testimony adduced at trial may establish the element of being sentenced for a crime, regardless of whether the jury actually sees the certified judgment of conviction. State v. Hughes, 2011 WI App 87, 334 Wis. 2d 445, 799 N.W.2d 504, 10−1322.

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.

(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.

(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.

(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.

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:

(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:

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:

(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.

(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.

(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 juvenile correctional facility, as defined in s. 938.02 (10p), a secured residential care center for children and youth, as defined in s. 938.02 (15g), and a Type 2 residential care center for children and youth, 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 juvenile correctional facility or a secured residential care center for children and youth under s. 938.183, 938.34 (4m), or 938.357 (4) or (5) (e), or who is placed in a Type 2 residential care center for children and youth under s. 938.34 (4d).

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; 2005 a. 344; 2013 a. 334.

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 juvenile correctional facility, as defined in s. 938.02 (10p), a secured residential care center for children and youth, as defined in s. 938.02 (15g), and a Type 2 residential care center for children and youth, 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 juvenile correctional facility or a secured residential care center for children and youth under s. 938.183, 938.34 (4m) or 938.357 (4) or (5) (e), or who is placed in a Type 2 residential care center for children and youth under s. 938.34 (4d).

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; 2005 a. 344; 2013 a. 334.

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.

946.465 Tampering with a global positioning system tracking device. Whoever, without the authorization of the department of corrections, intentionally tampers with, or blocks, diffuses, or prevents the clear reception of, a signal transmitted by, a global positioning system tracking device or comparable technology that is provided under s. 301.48 or 301.49 is guilty of a Class I felony.

History: 2005 a. 431; 2007 a. 181; 2011 a. 266.

946.47 Harboring or aiding felons. (1) Whoever does either of the following may be penalized as provided in sub. (2m):

(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.

(2m) Whoever violates sub. (1) is guilty of the following:

(a) A Class G felony, if the offense committed by the felon being aided is, or would have been if the offense had been committed in this state, any of the following:

1. A Class A, B, C, or D felony.

2. An unclassified felony that is punishable by a sentence of life imprisonment.

(b) A Class I felony, if the offense committed by the felon being aided is, or would have been if the offense had been committed in this state, any of the following:

1. A Class E, F, G, H, or I felony.

2. An unclassified felony that is not punishable by a sentence of life imprisonment.

History: 1977 c. 173; 1993 a. 486; 1999 a. 162; 2001 a. 109; 2013 a. 254.

A person may be a "felon" under sub. (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), 97−3131.

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.

(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.

(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.

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), 94−2570.

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), 97−0071.

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 739, 580 N.W.2d 329 (1998), 96−0087.

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), 98−0962.

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, 99−2203.

When a bail jumping charge is premised upon the commission of a further crime, the jury must be properly instructed regarding the elements of that further crime. When a bail jumping charge is premised upon the commission of a lesser−included offense of the further crime, the jury must be properly instructed under the law of lesser−included offenses. State v. Henning, 2003 WI App 54, 261 Wis. 2d 664, 660 N.W.2d 698, 02−1287.

Reversed on other grounds, 2004 WI 89, 273 Wis. 2d 352, 681 N.W.2d 871, 02−1287.

"Release" refers to the defendant posting the bond, be it signature or cash, and need not be accompanied by the defendant's physical departure from the jailhouse. Here, the defendant made bond on a signature bond by signing it, therefore committing himself to its conditions, although he did not post 2 required cash bonds. While not physically released, the defendant was subject to this section for violating the conditions of the signature bond. State v. Dewitt, 2008 WI App 134, 313 Wis. 2d 794, 758 N.W.2d 201, 07−2869.

The defendant's argument that his conviction on two bail−jumping counts was multiplicitous because the preliminary hearings at which he failed to appear were scheduled for the same time and he had signed only one bond for the two underlying cases failed because the counts were different in fact. Proof of notification and failure to appear in one case would not prove notification and failure to appear in the other, making the two charges different in nature and therefore different in fact. State v. Eaglefeathers, 2009 WI App 2, 316 Wis. 2d 152, 762 N.W.2d 690, 07−0845.

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.

(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.

(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.

(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.

(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.

946.52 Failure to submit biological specimen. Whoever intentionally fails to comply with a requirement to submit a biological specimen under s. 165.76, 165.84 (7), 938.21 (1m), 938.30 (2m), 938.34 (15), 970.02 (8), 973.047, or 980.063 is guilty of a Class A misdemeanor.

History: 2013 a. 20 s. 1922; 2013 Stats. s. 946.52.

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.

(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.

(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:

(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.

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.

(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 speci-

fied 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.

(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.

(c) If the document under par. (a) simulates any criminal process, the person is guilty of a Class H 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 or 193 to furnish or provide telecommunications service, or a cooperative organized under ch. 185 to furnish or provide gas, electricity, power or water.

(2) Whoever does any of the following is guilty of a Class I 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; 2005 a. 441.

Sub. (1) [now sub. (2) (a)] 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, fire fighters, or other emergency personnel. (1) (a) 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.

(b) Except as provided in sub. (2), whoever impersonates a fire fighter with intent to mislead others into believing that the person is actually a fire fighter is guilty of a Class A misdemeanor.

(c) Except as provided in sub. (2), whoever impersonates an emergency medical technician, as defined in s. 256.01 (5), with intent to mislead others into believing that the person is actually an emergency medical technician is guilty of a Class A misdemeanor.

(d) Except as provided in sub. (2), whoever impersonates a first responder, as defined in s. 256.01 (9), with intent to mislead others into believing that the person is actually a first responder 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 a crime under this section is guilty of a Class H felony.

History: 1977 c. 173; 1985 a. 97, 332; 2001 a. 109; 2011 a. 276.

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

946.71 Unlawful use of license for carrying concealed weapons. (1) In this section, "license" means a license issued under s. 175.60 (2) or (9r).

(2) Whoever does any of the following is guilty of a Class A misdemeanor:

(a) Intentionally represents as valid any revoked, suspended, fictitious, or fraudulently altered license.

(b) If the actor holds a license, intentionally sells or lends the license to any other individual or knowingly permits another individual to use the license.

(c) Intentionally represents as one's own any license not issued to him or her.

(d) If the actor holds a license, intentionally permits any unlawful use of that license.

(e) Intentionally reproduces by any means a copy of a license for a purpose that is prohibited under this subsection.

(f) Intentionally defaces or intentionally alters a license.

History: 2011 a. 35.

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.

(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.

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.

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

946.78 False statement regarding military service. (1) In this section:

(a) "Military" means the U.S. armed forces, the state defense force, the national guard of any state, or any other reserve component of the U.S. armed forces.

(b) "Tangible benefit" includes financial remuneration, an effect on the outcome of a criminal or civil court proceeding, an

effect on an election, and any benefit relating to service in the military that is provided by a federal, state, or local governmental unit or agency.

(2) Except as provided in sub. (3), whoever knowingly and with the intent to receive a tangible benefit falsely claims any of the following is guilty of a Class A misdemeanor:

(a) That he or she is or was a service member in the military.

(b) That he or she has been awarded a Congressional Medal of Honor, a Distinguished Service Cross, a Navy Cross, an Air Force Cross, a Silver Star, a Bronze Star, a Purple Heart, a Combat Infantryman's Badge, a Combat Action Badge, a Combat Medical Badge, a Combat Action Ribbon, a Combat Action Medal, or a Special Operations Identifier or Special Qualification or Skill Identifier, as authorized by Congress or pursuant to federal law for the U.S. armed forces.

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

History: 2015 a. 30.

946.79 False statements to financial institutions. **(1)** In this section:

(a) "Financial institution" means a bank, savings bank, savings and loan association, credit union, loan company, sales finance company, insurance premium finance company, community currency exchange, seller of checks, insurance company, trust company, securities broker−dealer, as defined in s. 551.102 (4), mortgage banker, mortgage broker, pawnbroker, as defined in s. 134.71 (1) (e), telegraph company, or dealer in precious metals, stones, or jewels.

(b) "Financial transaction information" means information being submitted to a financial institution in connection with a transaction with that financial institution.

(c) "Monetary instrument" includes any of the following:

1. Coin or currency of the United States or any other country.

2. Traveler's check, personal check, money order, or share draft or other draft for payment.

3. Investment security or negotiable instrument, in bearer form, book entry, or other form that provides that title to the security or instrument passes upon delivery or transfer of the security or instrument.

4. Precious metals, stones, or jewels.

(d) "Personal identification document" has the meaning given in s. 943.201 (1) (a).

(e) "Personal identifying information" has the meaning given in s. 943.201 (1) (b).

(f) "Transaction" means the acquisition or disposition of property by any means, including any of the following:

1. The purchase, sale, trade, transfer, transmission, exchange, loan, pledge, investment, delivery, deposit, or withdrawal of a monetary instrument.

2. The use of a safe deposit box.

3. The extension of credit.

(2) Whoever knowingly does any of the following in connection with the submission of financial transaction information is guilty of a Class H felony:

(a) Falsifies or conceals or attempts to falsify or conceal an individual's identity.

(b) Makes a false statement regarding an individual's identity.

(c) Makes or uses a writing containing false information regarding an individual's identity.

(d) Uses a false personal identification document or false personal identifying information.

History: 2003 a. 36; 2007 a. 196.

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.

If a party violating this section could defend its actions using the voluntary payment rule, then the broad, remedial purpose of this section would be undermined. MBS−Certified Public Accountants, LLC v. Wisconsin Bell Inc. 2013 WI App 14, 346 Wis. 2d 173, 828 N.W.2d 575, 08−1830.

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, subch. V of ch. 551, 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, 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, 940.302 (2), 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, 943.203, 943.23 (1g), (2) and (3), 943.24 (2), 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) and (4m), 943.60, 943.70, 943.76, 943.81, 943.82, 943.83, 943.84, 943.85, 943.86, 943.87, 943.88, 943.89, 943.90, 944.21 (5) (c) and (e), 944.32, 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, 946.79, 947.015, 948.05, 948.051, 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; 2003 a. 36, 321; 2005 a. 212; 2007 a. 116, 196; 2009 a. 180; 2011 a. 174; 2013 a. 362.

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), 93−0140.

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), 93−3227.

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.

(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.

(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 this section, 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 1150 (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.

946.90 Wisconsin Works fraud. (1) In this section:

(a) "Provider" means a Wisconsin Works agency, a person that contracts with a Wisconsin Works agency to provide services to a participant in Wisconsin Works, or a person that provides child care for reimbursement under s. 49.155.

(b) "Wisconsin Works" means the assistance program for families with dependent children administered under ss. 49.141 to 49.161.

(c) "Wisconsin Works agency" has the meaning given in s. 49.001 (9).

(2) Whoever does any of the following is guilty of a Class A misdemeanor:

(a) Intentionally makes or causes to be made any false statement or representation of a material fact in any application for or receipt of any Wisconsin Works benefit or payment.

(b) Having knowledge of the occurrence of any event affecting the initial or continued eligibility for a Wisconsin Works benefit or payment under Wisconsin Works, conceals or fails to disclose that event with an intent to fraudulently secure a Wisconsin Works benefit or payment either in a greater amount or quantity than is due or when no such benefit or payment is authorized.

(3) Whoever violates sub. (2) by furnishing items or services for which payment is or may be made under Wisconsin Works is guilty of a Class H felony.

(4) (a) Whoever solicits or receives money, goods, services, or any other thing of value, in return for referring an individual to a person for the furnishing or arranging for the furnishing of any item or service for which payment may be made in whole or in part under Wisconsin Works, or in return for purchasing, leasing, ordering, or arranging for or recommending purchasing, leasing, or ordering any good, facility, service, or item for which payment may be made in whole or in part under Wisconsin Works, is guilty

of a Class H felony, except that, notwithstanding the maximum fine specified in s. 939.50 (3) (h), the person may be fined not more than $25,000.

(b) Whoever offers or provides money, goods, services, or any other thing of value to any person to induce the person to refer an individual to a person for the furnishing or arranging for the furnishing of any item or service for which payment may be made in whole or in part under Wisconsin Works, or to purchase, lease, order, or arrange for or recommend purchasing, leasing, or ordering any good, facility, service or item for which payment may be made in whole or in part under any provision of Wisconsin Works, is guilty of a Class H felony, except that, notwithstanding the maximum fine specified in s. 939.50 (3) (h), the person may be fined not more than $25,000.

(c) This subsection does not apply to any of the following:

1. A discount or other reduction in price obtained by a provider of services or other entity under chs. 46 to 51 and 58 if the reduction in price is properly disclosed and appropriately reflected in the costs claimed or charges made by the provider or entity under Wisconsin Works.

2. An amount paid by an employer to an employee who has a bona fide employment relationship with the employer for employment in the provision of covered items or services.

(5) A provider who knowingly imposes upon a participant in Wisconsin Works charges in addition to payments received by the provider for services under Wisconsin Works or knowingly imposes direct charges upon a participant in Wisconsin Works in lieu of obtaining payment under Wisconsin Works is guilty of a Class H felony, except that, notwithstanding the maximum fine specified in s. 939.50 (3) (h), the person may be fined not more than $25,000. This subsection does not apply if benefits or services are not provided under Wisconsin Works and the Wisconsin Works participant is advised of this fact prior to receiving the service.

History: 2013 a. 226 ss. 2, 7, 9, 51, 52, 53; Stats. 2013 s. 946.90.

946.91 Medical Assistance fraud. (1) In this section:

(a) "Facility" means a nursing home or a community−based residential facility that is licensed under s. 50.03 and that is certified by the department of health services as a provider of aid under Medical Assistance.

(b) "Medical Assistance" means the program providing aid under subch. IV of ch. 49, except ss. 49.468 and 49.471.

(c) "Provider" means a person, corporation, limited liability company, partnership, incorporated business, or professional association, and any agent or employee thereof, who provides services under Medical Assistance.

(2) Whoever does any of the following is guilty of a Class H felony, except that, notwithstanding the maximum fine specified in s. 939.50 (3) (h), the person may be fined not more than $25,000:

(a) Intentionally makes or causes to be made any false statement or representation of a material fact in any application for any Medical Assistance benefit or payment.

(b) Intentionally makes or causes to be made any false statement or representation of a material fact for use in determining eligibility for any Medical Assistance benefit or payment.

(c) Having knowledge of the occurrence of any event affecting the initial or continued eligibility for any Medical Assistance benefit or payment or the initial or continued eligibility for any such benefit or payment of any other individual in whose behalf he or she has applied for or is receiving such benefit or payment, conceals or fails to disclose such event with an intent to fraudulently secure such benefit or payment either in a greater amount or quantity than is due or when no such benefit or payment is authorized.

(d) Having applied to receive any Medical Assistance benefit or payment for the use and benefit of another and having received it, knowingly and willfully converts the benefit or payment or any part thereof to a use that is not for the benefit of such other person.

(3) (a) Whoever solicits or receives, directly, indirectly, overtly, or covertly, money, goods, services, or any other thing of value in return for referring an individual to a person for the furnishing or arranging for the furnishing of any item or service for which payment may be made in whole or in part under Medical Assistance, or in return for purchasing, leasing, ordering, or arranging for or recommending purchasing, leasing, or ordering any good, facility, service, or item for which payment may be made in whole or in part under Medical Assistance, is guilty of a Class H felony, except that, notwithstanding the maximum fine specified in s. 939.50 (3) (h), the person may be fined not more than $25,000.

(b) Whoever offers or provides, directly, indirectly, overtly, or covertly, money, goods, services, or any other thing of value to any person to induce such person to refer an individual to a person for the furnishing or arranging for the furnishing of any item or service for which payment may be made in whole or in part under Medical Assistance, or to purchase, lease, order, or arrange for or recommend purchasing, leasing, or ordering any good, facility, service or item for which payment may be made in whole or in part under Medical Assistance, is guilty of a Class H felony, except that, notwithstanding the maximum fine specified in s. 939.50 (3) (h), the person may be fined not more than $25,000.

(c) This subsection does not apply to any of the following:

1. A discount or other reduction in price obtained by a provider of services or other entity under chs. 46 to 51 and 58 if the reduction in price is properly disclosed and appropriately reflected in the costs claimed or charges made by the provider or entity under Medical Assistance.

2. An amount paid by an employer to an employee who has a bona fide employment relationship with such employer for employment in the provision of covered items or services.

(4) Whoever knowingly and willfully makes or causes to be made, or induces or seeks to induce the making of, any false statement or representation of a material fact with respect to the conditions or operation of any institution or facility in order that such institution or facility may qualify either upon initial certification or upon recertification as a hospital, skilled nursing facility, intermediate care facility, or home health agency is guilty of a Class H felony, except that, notwithstanding the maximum fine specified in s. 939.50 (3) (h), the person may be fined not more than $25,000.

(5) Whoever knowingly imposes upon a Medical Assistance recipient charges in addition to payments received for services under ss. 49.45 to 49.471 or knowingly imposes direct charges upon a recipient in lieu of obtaining payment under ss. 49.45 to 49.471 is guilty of a Class H felony, except that, notwithstanding the maximum fine specified in s. 939.50 (3) (h), the person may be fined not more than $25,000. This subsection does not apply under any of the following circumstances:

(a) Benefits or services are not provided under s. 49.46 (2) or 49.471 (11) and the Medical Assistance recipient is advised of this fact prior to receiving the service.

(b) An applicant is determined to be eligible retroactively under s. 49.46 (1) (b), 49.47 (4) (d), or 49.471, a provider bills the applicant directly for services and benefits rendered during the retroactive period, the provider, upon notification of the applicant's retroactive eligibility, submits a claim for payment under s. 49.45 for covered services or benefits rendered to the recipient during the retroactive period, and the provider reimburses the recipient or other person who has made prior payment to the provider for services provided to the recipient during the retroactive eligibility period, by the amount of the prior payment made upon receipt of payment under s. 49.45.

(c) Benefits or services are provided for which recipient copayment, coinsurance, or deductible is required under s. 49.45 (18), not to exceed maximum amounts allowable under 42 CFR 447.53 to 447.58, or for which recipient copayment or coinsurance is required under s. 49.471 (11).

(6) Whoever, in connection with Medical Assistance when the cost of the services provided to the patient is paid for in whole or in part by the state, intentionally charges, solicits, accepts, or receives, in addition to any amount otherwise required to be paid under Medical Assistance, any gift, money, donation, or other consideration, other than a charitable, religious, or philanthropic contribution from an organization or from a person unrelated to the patient, as a precondition of admitting a patient to a hospital, skilled nursing facility, or intermediate care facility, or as a requirement for the patient's continued stay in such a facility is guilty of a Class H felony, except that, notwithstanding the maximum fine specified in s. 939.50 (3) (h), the person may be fined not more than $25,000.

History: 2013 a. 226 ss. 13, 17, 19, 21, 23, 25, 29, 54; Stats. 2013 s. 946.91; 2015 a. 195.

946.92 Food stamp offenses. (1) In this section:

(a) "Eligible person" means a member of a household certified as eligible for the food stamp program or a person authorized to represent a certified household under 7 USC 2020 (e) (7).

(b) "Food" means items that may be purchased using food stamp program benefits under 7 USC 2016 (b).

(c) "Food stamp program" means the federal food stamp program under 7 USC 2011 to 2036a.

(d) "Supplier" means a retail grocery store or other person authorized by the federal department of agriculture to accept food stamp program benefits in exchange for food under the food stamp program.

(dm) "Traffic food stamp program benefits" means to do any of the following:

1. Buy, sell, steal, or otherwise accomplish the exchange of, directly, indirectly, in collusion with others, or individually, food stamp program benefits issued and accessed through the electronic benefit transfer program under s. 49.797, or by manual voucher and signature, for cash or other consideration that is not food.

2. Exchange firearms, ammunition, explosives, or controlled substances, as defined in 21 USC 802, for food stamp program benefits.

3. Use food stamp program benefits to purchase food that includes a container deposit for the sole purpose of discarding the container contents and returning the container for a cash refund of the deposit.

4. Resell food purchased with food stamp program benefits for the purpose of obtaining cash or other consideration that is not food.

5. Purchase, for cash or other consideration that is not food, food that was previously purchased from a supplier using food stamp program benefits.

6. Any other action that is trafficking under 7 USC 2011 to 2036a.

(e) "Unauthorized person" means a person who is not one of the following:

1. An employee or officer of the federal government, the state, a county, a multicounty consortium, or a federally recognized American Indian tribe acting in the course of official duties in connection with the food stamp program.

2. A person acting in the course of duties under a contract with the federal government, the state, a county, a multicounty consortium, or a federally recognized American Indian tribe in connection with the food stamp program.

3. An eligible person.

4. A supplier.

5. A person authorized to redeem food coupons under 7 USC 2019.

(2) (a) No person may misstate or conceal facts in a food stamp program application or report of income, assets or household circumstances with intent to secure or continue to receive food stamp program benefits.

(b) No person may knowingly fail to report changes in income, assets or other facts as required under 7 USC 2015 (c) (1) or regulations issued under that provision.

(c) No person may knowingly issue food stamp program benefits to a person who is not an eligible person or knowingly issue food stamp program benefits to an eligible person in excess of the amount for which the person's household is eligible.

(d) No eligible person may knowingly transfer food stamp program benefits except to purchase food from a supplier or knowingly obtain or use food stamp program benefits for which the person's household is not eligible.

(e) No supplier may knowingly obtain food stamp program benefits except as payment for food or knowingly obtain food stamp program benefits from a person who is not an eligible person.

(f) No unauthorized person may knowingly obtain, possess, transfer, or use food stamp program benefits.

(g) No person may knowingly traffic food stamp program benefits.

(3) (a) Whoever violates sub. (2) is subject to the following penalties:

1. If the value of the food stamp program benefits does not exceed $100, a Class B misdemeanor.

2. Except as provided in subd. 3., if the value of the food stamp program benefits exceeds $100, but is less than $5,000, a Class I felony.

3. If the value of the food stamp program benefits exceeds $100, but is less than $5,000, and the person has a prior conviction under this section, a Class H felony.

4. If the value of the food stamp program benefits is $5,000 or more, a Class G felony.

(b) In addition to the penalties applicable under par. (a), the court shall suspend a person who violates sub. (2) from participation in the food stamp program as follows:

1. For a first conviction under this section, for not less than one year and not more than 2 years and 6 months.

2. For a 2nd conviction under this section, for not less than 2 years and not more than 3 years and 6 months.

3. For a 3rd conviction under this section, permanently.

(c) In addition to the penalties applicable under par. (a), a court shall permanently suspend from the food stamp program a person who has been convicted of an offense under 7 USC 2024 (b) or (c) involving an item covered by 7 USC 2024 (b) or (c) having a value of $500 or more.

(d) 1. If a person violated sub. (2) by trading a controlled substance, as defined in s. 961.01 (4), for food stamp program benefits, the court shall suspend the person from participation in the food stamp program as follows:

a. Upon a first conviction, for 2 years.

b. Upon a 2nd conviction, permanently.

2. If a person violated sub. (2) by trading firearms, ammunition, or explosives for food stamp program benefits, the court shall suspend the person permanently from participation in the food stamp program.

(e) Notwithstanding pars. (b) and (c), in addition to the penalties applicable under par. (a), the court shall suspend from the food stamp program for a period of 10 years a person who violates sub. (2) by fraudulently misstating or misrepresenting his or her identity or place of residence for the purpose of receiving multiple benefits simultaneously under the food stamp program.

History: 2013 a. 226 ss. 35, 36, 38, 41, 42, 44, 55; Stats. 2013 s. 946.92; 2015 a. 195 s. 82.

946.93 Public assistance fraud. (1) In this section, "public assistance" means any aid, benefit, or services provided under ch. 49.

(2) Whoever intentionally makes or causes to be made any false statement or representation of material fact in any application for or receipt of public assistance is guilty of a Class A misdemeanor.

(3) No person may do any of the following:

(a) Having knowledge of an event affecting the initial or continued eligibility for public assistance, conceal or fail to disclose that event with an intent to fraudulently secure public assistance, including payment either in a greater amount or quantity than is due or when no such benefit or payment is authorized.

(b) Receive any income or assets and fail to notify the public assistance agency within 10 days after receiving the income or assets, unless a different time period is required under the applicable public assistance program.

(c) Fail to notify the public assistance agency within 10 days of any change in circumstances for which notification by the recipient must be provided under law, unless a different time period is required under the applicable public assistance program.

(d) Receive a voucher under a public assistance program for goods or services and use the funding granted under the voucher for purposes that are not authorized by the public assistance agency.

(e) Whoever violates par. (a), (b), (c), or (d) is subject to the following penalties:

1. If the value of the payment or benefit does not exceed $300, a Class B forfeiture.

2. If the value of the payment or benefit is more than $300 but does not exceed $1,000, a Class B misdemeanor.

3. If the value of the payment or benefit is more than $1,000 but does not exceed $2,000, a Class A misdemeanor.

4. If the value of the payment or benefit is more than $2,000 but does not exceed $5,000, a Class I felony.

5. If the value of the payment or benefit is more than $5,000 but does not exceed $10,000, a Class H felony.

6. If the value of the payment or benefit is more than $10,000, a Class G felony.

(4) A person who obtains money, goods, services, or any other thing of value because he or she sends or brings a person to a county department, federally recognized American Indian tribe or band, multicounty consortium, or Wisconsin Works agency for the purpose of obtaining public assistance is guilty of a Class C misdemeanor.

(5) (a) Whoever solicits or receives money, goods, services, or any other thing of value in return for referring an individual to a person for the furnishing or arranging for the furnishing of any item or service for which a public assistance payment may be made in whole or in part, or in return for purchasing, leasing, ordering, or arranging for or recommending purchasing, leasing, or ordering any good, facility, service, or item for which public assistance payment may be made in whole or in part, is guilty of a Class H felony, except that, notwithstanding the maximum fine specified in s. 939.50 (3) (h), the person may be fined not more than $25,000.

(b) Whoever offers or provides money, goods, services, or any other thing of value to any person to induce the person to refer an individual to a person for the furnishing or arranging for the furnishing of any item or service for which public assistance payment may be made in whole or in part, or to purchase, lease, order, or arrange for or recommend purchasing, leasing, or ordering any good, facility, service, or item for which public assistance payment may be made in whole or in part, is guilty of a Class H felony, except that, notwithstanding the maximum fine specified in s. 939.50 (3) (h), the person may be fined not more than $25,000.

(c) This subsection does not apply to any of the following:

1. A discount or other reduction in price obtained by a provider of services or other entity under chs. 46 to 51 and 58 if the reduction in price is properly disclosed and appropriately reflected in the costs claimed or charges made by the provider or entity under a public assistance program.

2. An amount paid by an employer to an employee who has a bona fide employment relationship with the employer for employment in the provision of covered items or services.

(6) Whoever makes any statement in a written application for public assistance is considered to have made an admission as to the existence, correctness, or validity of any fact stated. Such a statement is prima facie evidence against the person who made it in any complaint, information, or indictment, or in any action brought for enforcement of any provision of this section or ch. 49.

History: 2013 a. 226.