940.22 History: 1955 c. 696; Stats. 1955 s. 940.22; 1961 c. 48.

An assault with intent to do great bodily harm, under sec. 4377, Stats. 1919, is the same whether committed in the heat of passion or with deliberation. Mainville v. State, 173 W 12, 179 NW 764.

The submission of a verdict covering assault with intent to murder while armed with a dangerous weapon, assault with intent to do great bodily harm, under 340.41, Stats. 1941, and simple assault, and a conviction for assault with intent to do great bodily harm, were proper as against the contention that the offense of assault with intent to murder while armed with a dangerous weapon excludes lower forms of assault while so armed. State v. Wagner, 239 W 634, 2 NW (2d) 229.

See note to 939.32, citing State v. Vinson, 269 W 305, 68 NW (2d) 712, 70 NW (2d) 1.

Assault with intent to do great bodily harm is a lesser offense than mayhem and is included therein, so that he may be found guilty of the lesser when the greater offense is not proved. State v. Carli, 2 W (2d) 429, 86 NW (2d) 434, 87 NW (2d) 830.

Where defendant struck his victim over the head with a ratchet wrench and she suffered a two inch scalp laceration which required hospitalization for a few days, but she suffered no pain other than headaches and a sore jaw, the victim did not sustain "great bodily harm" within the meaning of 940.22. State v. Bronston, 7 W (2d) 627, 97 NW (2d) 504, 98 NW (2d) 468.

940.23 History: 1955 c. 696; Stats. 1955 s. 940.23.

A charge under sec. 4374a, Stats. 1921, is much more serious than a charge of manslaughter. Except as to death, the charge must correspond with a charge of murder in the second degree. Driving a motorcycle upon a country highway at 2 o'clock in the morning at a high rate of speed resulting in a collision and injury to persons in another vehicle was not a violation of this section, since there was lacking proof of a depraved mind, regardless of human life. Njecick v. State, 178 W 94, 189 NW 147.

See note to 940.02, citing State v. Johnson, 233 W 668, 290 NW 159.

940.24 History: 1955 c. 696; Stats. 1955 s. 940.24; 1965 c. 417.

On homicide by negligent use of vehicle or weapon see notes to 940.08.

940.28 History: 1955 c. 696; Stats. 1955 s. 940.28.

940.29 History: 1955 c. 696; Stats. 1955 s. 940.29.

A rule of the state board of public welfare authorizing corporal punishment of inmates of the industrial school for boys does not conflict with the statute and is authorized under 46.03 (5). Excessive punishment would violate the statute as well as constitute assault and battery giving rise to an action for damages. 33 Atty. Gen. 127.

940.30 History: 1955 c. 696; Stats. 1955 s. 940.30.

940.31 History: 1955 c. 696; Stats. 1955 s. 940.31.

The intent mentioned in sec. 4387, R. S. 1878, qualifies each preceding clause thereof to which it can be made applicable, and must be alleged and proved in order to support a conviction thereunder. Smith v. State, 63 W 453, 23 NW 879.

For an information conceded to be insufficient under the statute, but good at common law, see Davies v. State, 72 W 54, 38 NW 722.

Conviction of the offense of kidnaping does not require proof that the victim was carried beyond the boundaries of the state or that it was the intention of defendants to carry him without the state. An allegation of intent to secretly confine or imprison another person within the state against his will is sufficient to distinguish the offense of kidnaping from the offense of false imprisonment. Hackbarth v. State, 201 W 3, 229 NW 83.

The power to arrest does not confer upon the arresting officer the power to detain a prisoner for other purposes. The defendants in an action for false imprisonment, having detained the plaintiff in the exercise of a supposed power which they did not possess, cannot complain that upon the trial they were not permitted to justify the act upon other grounds. An officer who unlawfully arrests and detains a person upon one charge cannot justify his conduct by showing that the person so arrested was subject to a legal arrest upon other grounds. Geldon v. Finnegan, 213 W 539, 252 NW 369.

A mother, having temporary lawful custody of a child by virtue of a divorce decree, is not guilty of kidnaping where she takes such child out of the state and refuses to surrender it to the custody of the father, who is entitled to permanent custody under the divorce decree. 4 Atty. Gen. 802.

940.32 History: 1955 c. 696; Stats. 1955 s. 940.32.

A mother is not guilty of an offense under 355.55, Stats. 1929, if she secretly takes her own children away from her husband who has custody of the children after a divorce. 20 Atty. Gen. 91.

A conviction under the abduction statute is not a conviction of "kidnaping". 28 Atty. Gen. 4.

See note to 971.19, citing 37 Atty. Gen. 401.

CHAPTER 941.

Crimes Against Public Health and Safety.

941.01 History: 1955 c. 696; Stats. 1955 s. 941.01; 1957 c. 674.

See note to 346.62, citing 46 Atty. Gen. 110.

941.03 History: 1955 c. 696; Stats. 1955 s. 941.03.

It is not necessary, in an action under sec. 4386, Stats. 1898, to show that the defendant was actuated with an intent to prevent the safe running of trains or injure human life. State v. Bisping, 123 W 267, 101 NW 359.

941.04 History: 1955 c. 696; Stats. 1955 s. 941.04.

941.10 History: 1955 c. 696; Stats. 1955 s. 941.10.

941.11 History: 1955 c. 696; Stats. 1955 s. 941.11.

See note to sec. 1, art. I, on exercises of police power, citing Voss v. State, 204 W 432, 236 NW 128.

941.12 History: 1955 c. 696; Stats. 1955 s. 941.12.

941.13 History: 1955 c. 696; Stats. 1955 s. 941.13; 1969 c. 243.

941.20 History: 1955 c. 696; Stats. 1955 s. 941.20; 1965 c. 403, 417.

On endangering safety by conduct regardless of life see notes to 941.30.

Pointing a loaded cocked revolver at a person, by a boy 13 years of age, is within sec. 4391, Stats. 1898. Horton v. Wylie, 115 W 505, 92 NW 245.

See note to 940.02, citing Schmidt v. State, 159 W 15, 149 NW 388.

941.22 History: 1955 c. 696; Stats. 1955 s. 941.22.

A .22-caliber rifle is not within the scope of sec. 4397, Stats. 1898. Taylor v. Seil, 120 W 32, 97 NW 498.

An instrument commonly known as an "air pistol", discharging a .177-caliber slug by means of air compression, is not a "pistol" in the meaning of 340.69, Stats. 1947. 37 Atty. Gen. 236.

941.23 History: 1955 c. 696; Stats. 1955 s. 941.23; 1969 c. 272.

On searches and seizures see notes to sec. 11, art. I.

The evidence, though not showing a revolver was loaded, was sufficient to sustain a conviction under 340.69, Stats. 1929, for going armed with a concealed and dangerous weapon. An automobile driver who had a dangerous weapon within reach on a shelf in the back of his seat violated the statute. If a weapon is hidden from ordinary observation, it is "concealed" within the statute, absolute invisibility being unnecessary. Mularkey v. State, 201 W 429, 230 NW 76.

941.24 History: 1959 c. 13; Stats. 1959 s. 941.24.

941.30 History: 1955 c. 696; Stats. 1955 s. 941.30.

On injury by conduct regardless of life see notes to 940.23.

941.30, Stats. 1965, creates a separate crime of endangering a person's life by conduct which is of such a nature as normally would cause or be likely to cause or result in death and which is performed with the general intention to do harm without concern whether such harm would result in death, but does not include as an element proof of a specific intent to harm a particular person. State v. Dolan, 44 W (2d) 68, 170 NW (2d) 822.

To be "imminently dangerous to another" as contemplated by 941.30, there need be no movement with an instrumentality, but the threat to use the instrumentality and the ability to use it immediately constitute imminency. State v. Dolan, 44 W (2d) 68, 170 NW (2d) 822.

The phrase "depraved mind, regardless of human life" as used in 941.30 does not mean insanity or feeblemindedness, but does connote the same intent as in first-degree murder except for the absence of the design to effect death. State v. Dolan, 44 W (2d) 68, 170 NW (2d) 822.

941.31 History: 1955 c. 696; Stats. 1955 s. 941.31.

The statute (sec. 4398a, Stats. 1913) creates 2 distinct classes of statutory offenses: first the having in possession or dealing with explosive compounds with intent that the same shall be used in this state, or elsewhere, for the injury or destruction of public or private property, or the assassination, murder or injury of persons; and, second, the having in possession or dealing with any such compound "knowing that such explosive compounds are intended to be used by any other person or persons for any such purpose." The latter offense is not committed where the accused believes that the explosive is to be used by persons who appear to be cooperating with him but are in fact detectives, and who have no intention of using the explosive unlawfully. Koscak v. State, 160 W 255, 152 NW 181.

941.32 History: 1955 c. 696; Stats. 1955 s. 941.32.

941.33 History: 1955 c. 696; Stats. 1955 s. 941.33.

941.34 History: 1959 c. 214; Stats. 1959 s. 941.34.

941.35 History: 1959 c. 469; 1959 c. 641 s. 41; Stats. 1959 s. 941.35; 1965 c. 56.

CHAPTER 942.

Crimes Against Reputation and Civil Liberties.

942.01 History: 1955 c. 696; Stats. 1955 s. 942.01.

On libel see notes to sec. 3, art. I.

A defective averment of publication will be disregarded after verdict if the defect could have been obviated by amendment before trial; as where obscurity might have been removed by correcting the punctuation. Barnum v. State, 92 W 586, 66 NW 617.

In a prosecution for slander it is not necessary to prove injury to reputation, it being sufficient that the slanderous words "exposed one to hatred, contempt or ridicule." Neither is it necessary to prove the speaking of all of the slanderous words charged, if a substantial part of them be proved. Hyde v. State, 159 W 651, 150 NW 965.

In a prosecution under 348.41, Stats. 1925, if the defense is a denial and not justification, evidence as to what defendant said at a subsequent time and place is inadmissible as this section provides the slander is deemed malicious if no justification is shown. Malone v. State, 192 W 379, 212 NW 879.

A telegram requesting plaintiff to settle on money collected, or face an embezzlement