

947.06 History: 1955 c. 696; Stats. 1955 s. 947.06; 1967 c. 215; 1969 c. 262; 1969 c. 392 s. 79.

The allegations that a time and place designated the defendants, to the number of 3, and more, "then and there being together, did then and there in a violent, unlawful and tumultuous manner, to the disturbance of the peace, and to the terror and disturbance of others then and there present, assault," charge an offense under sec. 4511, R. S. 1878. State v. Dean, 71 W 678, 38 NW 341.

See note to 66.091, citing Aron v. Wausau, 98 W 592, 74 NW 354.

A parade of 100 members of the Ku Klux Klan, clad in regulation regalia of white robes and masks, marching silently with folded arms, in double column through the streets of Boscobel at 9:45 P.M., while 6,000 or 7,000 people were assembled along the streets to watch the parade, was not an unlawful assemblage. Shields v. State, 187 W 448, 204 NW 486.

A verdict finding defendants guilty of engaging in unlawful assembly and riots was justified under evidence showing that they wilfully participated in assembling and keeping together on a public highway a large number of persons who unlawfully and in violent manner blockaded entrance to a building and lawful passage along a street, and refused to disperse peaceably when commanded to do so by police officers. Koss v. State, 217 W 325, 258 NW 860.

The evidence was sufficient to sustain conviction for unlawfully injuring and interfering with lawful operation of an automobile, and for rioting. Sekat v. State, 218 W 91, 260 NW 246.

See note to 66.091, citing Febock v. Jefferson County, 219 W 154, 262 NW 588.

See note to 103.53, citing 23 Atty. Gen. 279.

947.07 History: 1955 c. 696; Stats. 1955 s. 947.07.

947.08 History: 1957 c. 648; Stats. 1957 s. 947.08.

947.10 History: 1955 c. 696; Stats. 1955 s. 947.10; 1961 c. 665.

The purpose of the provision in 174.10 (1), Stats. 1951, that "no action" shall be maintained for injury to or destruction of a dog without a tag unless it appears affirmatively that the dog was duly licensed and that a tag had been properly attached to its collar, etc., was to penalize the dog owner who fails to purchase a license, and not to relieve from criminal liability the person who cruelly maims or tortures a dog, and the words "no action" as used therein refer to civil actions only, so that such provision does not preclude a criminal prosecution under 343.47 for maliciously maiming and killing a dog although the dog did not have a license tag affixed to its collar at the time of the commission of the offense. (State v. Garbe, 256 W 86, overruled so far as construing 174.10 (1) as applying to criminal as well as to civil actions.) State v. Surma, 263 W 388, 57 NW (2d) 370.

A person may be criminally convicted of cruelty to animals for injury to a dog, although no license for the dog has been secured. 13 Atty. Gen. 134.

947.15 History: 1955 c. 575; Stats. 1955 s. 48.45 (4); 1957 c. 38; Stats. 1957 s. 947.15; 1961 c. 485.

Editor's Note: The subject of this section was dealt with in a prior statute, sec. 351.20, which was derived from ch. 444, Laws 1905, amended by three later enactments, and repealed by ch. 575, Laws 1955. The statute was cited in *Gutenkunst v. State*, 218 W 96, 259 NW 610, in *State v. Driscoll*, 263 W 230, 56 NW (2d) 788, and in 37 Atty. Gen. 401.

See note to sec. 8, art. I, on limitations imposed by the Fourteenth Amendment, citing *State ex rel. Schuller v. Roraff*, 39 W (2d) 342, 159 NW (2d) 25.

The term "child" in 947.15, Stats. 1965, while not specifically defined therein, means a person under 18 years of age. *State ex rel. Schuller v. Roraff*, 39 W (2d) 342, 159 NW (2d) 25.

THE CODE OF CRIMINAL PROCEDURE

Editor's Notes: (1) Over the years since 1848, criminal procedure has been the subject of six major enactments of a comprehensive nature as well as numerous special enactments. The first was the legislation which enacted the Revised Statutes, 1849; title XXXI of that codification had to do with proceedings in criminal cases. The second was the legislation which enacted the Revised Statutes, 1858; title XXVII thereof covered proceedings in criminal cases as well as the substantive law of crimes. The third was the legislation which enacted the Revised Statutes, 1878; title XXVII thereof had the same coverage as the 1858 codification. The fourth was the legislation which enacted Wis. Statutes, 1898; title XXXIII thereof covered proceedings in criminal cases, but the provisions on that subject conformed essentially to those of 1878. The fifth was chap. 631, Laws 1949, which was drafted by the Advisory Committee on Rules of Pleading, Practice and Procedure; the comments of the committee were published in Wis. Annotations, 1950, and Wis. Annotations, 1960. The sixth was chap. 255, Laws 1969, which was prepared and submitted to the legislature by the Judicial Council; the comments relating to numerous sections of the 1969 code of criminal procedure are set out under the legislative histories.

(2) The following conversion tables were designed to serve as aids in ascertaining the origins of the numerous sections comprising the 1969 code of criminal procedure. Table I shows what happened to the sections of Wis. Statutes, 1967, which had to do with the subject of criminal procedure and which were either incorporated in the 1969 codification or repealed and not replaced (indicated by the word "deleted"). Table II shows the immediate sources of the 1969 codification; in this table there is listed each section of the 1969 codification and its counterpart in Wis. Statutes, 1967.

CONVERSION TABLE I

1967 Stats.	1969 Stats.
885.32	976.01
885.33	976.02

1967 Stats.	1969 Stats.
885.34	972.08
885.35	972.09
887.06	967.04
954.005	deleted
954.01	968.02, 968.04
954.015	deleted
954.017	968.05 (2), 973.17 (2)
954.02	(1) 968.01
	(2) 968.04 (1)
	(3) 968.02 (2)
	(4) 968.04 (1) part.
	(4m) 970.01 (2)
	(5)(a) 968.04 (3)(a)
	(5)(b) 968.04 (3)(b)1
	(6)(a) 968.04 (4)(a) and (c)
	(6)(b) 968.04 (3)(b) 2
	(6)(c) 968.04 (4)(d)
	(6)(d) deleted
	(7) 968.04 (3)(a) 7
	(8) deleted
954.021	deleted
954.025	968.26
954.03	(1) 968.07 (1)(d) and deleted in part
	(2) 968.07 (1)(b) and (c)
954.034	(1)(a) 969.11 (1)
	(1)(b) 969.11 (2)
	(2)(a) 969.05 (1) and deleted in part, 969.07
	(2)(b) 969.07
	(3) 970.01
954.035	deleted
954.036	(1) 970.02 (4), (5) and (6) part
	(2) 970.02 (3)
954.037	969.11 (1) part
954.038	970.02 (1) (c)
954.04	970.01 (1)
954.05	(1) 970.03 (2)
	(2) deleted
954.06	969.13 (1)
954.08	(1) 970.03 (5) and deleted in part
	(2) 970.03 (6)
	(3) 970.02 (5) part
954.09	971.20 (3)
954.10	970.03 (4)
954.11	970.05 and deleted in part
954.12	970.03 (9) and deleted in part
954.13	(1) 970.03 (7)
	(2) 970.03 (8)
954.14	deleted
954.15	(1) deleted
	(2) deleted
	(3) deleted
954.16	970.02 (2), 969.08 (2) last sentence
954.17	970.05
954.20	969.01 (3)
954.30	969.13 (1)
954.31	969.04
954.32	969.13 (2)
954.33	deleted
954.34	deleted
954.36	(1) 969.09 (1) part
	(2) deleted
954.38	deleted
954.39	969.09 (1) part
954.40	deleted
954.42	969.02 (2)(b), 969.03 (1)(d), 969.12
954.43	(1) 969.14 (1) part
	(2) 969.14 (2)
	(3) 969.14 (1) part

1967 Stats.	1969 Stats.
	(4) 969.14 (3)
954.44	I omitted this; check omnibus amendment.
954.46	deleted
954.47	deleted
954.48	deleted
955.01	971.01 (2)
955.02	deleted
955.03	deleted; see 971.05 NOTE
955.04	deleted
955.05	971.05 (3)
955.07	971.23 (8)
955.075	deleted
955.08	971.06 (2)
955.09	(1) deleted; see 971.31 NOTE
	(2) 971.31 (1)
	(3) 971.31 (2) and (3)
	(4) 971.31 (5)
	(5) 971.31 (4)
	(6) 971.31 (6)
	(7) 971.31 (7)
	(8) 971.31 (8)
955.10	971.10
955.11	deleted; see 972.11 NOTE
955.12	968.06, 967.05 (1)(c) and (2) and (3)
955.13	971.01
955.14	(1) 971.12 (1) part
	(2) deleted
	(3) 971.26
	(4) 971.29 (2) last sentence
955.15	968.06, 967.05 (1)(c) and (2) and (3)
955.17	(1) 971.01 (1)
	(2) deleted
955.18	(1) 971.02 (1)
	(2)(a) 971.02 (2)
	(2)(b) deleted
955.20	970.04
955.21	971.03
955.22	971.11
955.24	971.35
955.31	971.36
955.34	971.28
955.36	971.27
955.37	971.29 (1) part
955.39	971.32
955.395	971.33
955.40	971.34
955.41	deleted
956.01	(1) 971.19 (1)
	(2) 971.19 (3)
	(3) 971.19 (5)
	(4) 971.19 (6)
	(5) 971.19 (6)
	(6) 971.19 (7)
	(7) 971.19 (4) part
	(8) 971.19 (2)
	(9) deleted
	(10) 971.19 (2)
	(11) 971.19 (4) part
	(12) 971.19 (2)
	(13) 971.09
956.03	(1) 971.20
	(2) deleted
	(3) 971.22
956.04	971.22 (3) part
956.05	971.22 (3) part
956.06	deleted
956.09	deleted
956.10	deleted
957.01	(1) 972.02 (1)

1967 Stats.	1969 Stats.	1967 Stats.	1969 Stats.
957.01 (2)	972.02 (2)	(2)	972.13 (2)
(3)	972.02 (3)	959.02	972.13 (3)
957.02	972.02 (4)	959.03	972.13 (6)
957.03	972.03	959.04	deleted
957.04	972.04 (1)	959.044	973.02
957.05	972.05	959.05	(1)(a) 973.01 (1)(a)
957.052	deleted	(1)(b) 973.01 (1)(b)	
957.053	deleted	(2)	973.01 (2)
957.054	deleted	(3)	973.01 (3)
957.055	deleted	(4)	973.01 (4)
957.056	deleted	(5)	deleted
957.07	971.04 (1) and (2)	959.052(1)	973.08 part
957.08	972.06	(2)	deleted
957.09	deleted	(3)	deleted
957.11 (1)	971.06 (1)(d)	(4)	deleted
(2)	971.15 (3)	959.055	973.05
(3)	971.17 (1)	(1)	973.07
(4)	971.17 (2)	(2)	973.06 (1)
957.13 (1)	971.14 (4)	(3)	973.06 (2)
(2)	971.13	959.06	973.03 (1)
(3)	971.14 (5) part	959.07 (1)	973.15 (1)
(4)	971.14 (5) part	(2)	973.15 (2)
(5)	971.14 (6)	(3)	973.15 (3)
957.14	972.01	959.08	973.16
957.16 (1)	971.29 (2) part	959.10	973.17 (1)
(2)	971.29 (3)	959.11	973.17 (2) and (3)
957.25	971.06 (1)(c) part	959.12 (1)	973.12 (1)
957.255(1)	974.02 (1)	(2)	973.12 (2)
(2)	deleted	959.15 (1)	975.01
(3)	974.02 (4)	(2)	975.02
957.26 (1)	970.02 (1)(b)	(3)	975.03
(1m)	256.65	(4)	975.04 (1)
(2)	970.02 (6)	(5)	975.05
(3)	967.06 (1)	(6)	975.06 (2)
(4)	967.06 (2)	(7)(a)	975.07 (1)
(5)	967.06 (3)	(7)(b)	975.07 (2)
(6)	967.06 (4)	(7)(c)	975.07 (3)
957.263	256.66	(8)(a)	975.08 (1)
957.265	256.67	(8)(b)	975.08 (2)
957.27 (1)	971.16 (1) part	(8)(c)	975.08 (3)
(2)	971.16 (3) part	(8)(d)	975.08 (4)
(3)	971.16 (2) part	(9)	975.09
(4)	971.16 (2) part	(10)	975.10
957.28	deleted	(11)	975.11
958.01	deleted	(12)	975.12 (1) and (2)
958.02	deleted	(13)	975.13
958.03	deleted	(14)(a)	975.14 (1)
958.04	deleted	(14)(b)	975.14 (2)
958.05	deleted	(15)(a)	975.15 (1)
958.06 (1)	974.02 (1) and (2)	(15)(b)	975.15 (2)
(2)	deleted	(15)(c)	975.15 (3)
(3)(a)	974.02 (4)	(16)(a)	975.16 (1)
(3)(b)	973.04	(16)(b)	975.16 (2)
(3)(c)	973.04	(16)(c)	975.16 (3)
958.07	974.06 (1) part	(16)(d)	975.16 (4)
958.075(1)	969.01 (2)(b)	(17)	975.17
(2)	974.01 (8)	(18)	deleted
(3)	974.01 (2)	Chapter 960	deleted
(4)	974.01 (4)	Chapter 962	deleted
(5)	deleted	963.01	968.12 (1) part
958.08	deleted	963.02	968.12 (1) part, 968.13 (1), (2)
958.11	deleted	963.021	deleted
958.115	974.04	963.025	968.20 part
958.12 (1)	974.05 (1)	963.03 (1)	968.12 (1) part
(a)	974.05 (a)	(2)(a)	deleted; but see NOTE 968.12
(b)	974.05 (b)	(2)(b)	deleted
(c)	974.05 (c)	963.04	968.19, 968.20 (1) and (2), 968.05
(d)	974.05 (e)	963.05	968.23
(2)	974.05 (2)	963.06	deleted
958.13	974.03	963.07	968.21
958.14	969.01 (2)(c) and (d)	963.08	968.22
959.01 (1)	972.13 (1)	963.10	66.122

1967 Stats. 1969 Stats.
 963.11 66.123
 Chapter 964 except for 964.30 is 976.03
 964.30 976.04

CONVERSION TABLE II

1969 Stats. 1967 Stats.
 967.01 None
 967.02 None
 967.03 None
 967.04 887.06
 967.05 955.12, 955.15
 967.06 957.26 (3), (4), (5) & (6)
 968.01 954.02 (1)
 968.02 954.01, 954.02 (3)
 968.03 None
 968.04 954.01, 954.02 (2), (4), (5),
 (6) (a), (b) & (c) and (7)
 and 960.36
 968.05 954.017
 968.06 955.12, 955.15
 968.07 954.03
 968.08 None
 968.10 None
 968.11 None
 968.12 963.01, 963.02, 963.03 (1)
 968.13 963.02
 968.14 None
 968.15 None
 968.16 None
 968.17 None
 968.18 None
 968.19 963.04
 968.20 963.025, 963.04
 968.21 963.07
 968.22 963.08
 968.23 963.05
 968.24 None
 968.25 None
 968.26 954.025
 969.01 954.20, 958.075 (1), 958.14
 969.02 None
 969.03 None
 969.04 954.31
 969.05 954.034 (2)(a)
 969.06 None
 969.07 954.034 (2)
 969.08 954.16
 969.09 954.36 (1) & (2), 954.39, 954.42
 969.10 None
 969.11 954.034 (1)(a), (b), 954.037
 969.12 954.42
 969.13 954.06, 954.30, 954.32
 969.14 954.43
 970.01 954.02 (4m), 954.034 (3)
 970.02 954.036, 954.038, 954.04,
 954.16, 957.26 (1), (2)
 970.03 954.05, 954.08, 954.10,
 954.12, 954.13
 970.04 955.20
 970.05 954.11, 954.17
 971.01 955.01, 955.13, 955.17
 971.02 955.18
 971.03 955.21
 971.04 957.07
 971.05 955.05
 971.06 955.08, 957.11 (1), 957.25
 971.07 None
 971.08 None
 971.09 956.01 (13)
 971.10 955.10
 971.11 955.22

1969 Stats. 1967 Stats.
 971.12 955.14 (1)
 971.13 957.13
 971.14 957.13
 971.15 957.11 (2)
 971.16 957.27
 971.17 957.11 (3), (4)
 971.175 None
 971.18 None
 971.19 956.01
 971.20 954.09, 956.03
 971.21 None
 971.22 956.03 (3), 956.04, 956.05
 971.23 955.07
 971.24 None
 971.25 None
 971.26 955.14 (3)
 971.27 955.36
 971.28 955.34
 971.29 955.14 (4), 955.37, 957.16
 971.30 None
 971.31 955.09 (2) to (8)
 971.32 955.39
 971.33 955.395
 971.34 955.40
 971.35 955.24
 971.36 955.31
 972.01 957.14
 972.02 957.01, 957.02
 972.03 957.03
 972.04 957.04
 972.05 957.05
 972.06 957.08
 972.07 None
 972.08 885.34
 972.09 885.35
 972.10 None
 972.11 None
 972.12 None
 972.13 959.01, 959.02, 959.03
 972.14 None
 972.15 None
 973.01 959.05
 973.02 959.044
 973.03 959.06
 973.04 958.06 (3) (b), (c)
 973.05 959.055 (1)
 973.06 959.055 (2), (3)
 973.07 959.055 (1)
 973.08 959.052
 973.09 57.01, 57.04
 973.10 57.02, 57.03 (1), 57.15
 973.11 57.025
 973.12 959.12
 973.13 None
 973.14 None
 973.15 959.07
 973.16 959.08
 973.17 954.017, 959.10, 959.11
 974.01 958.075(2), (3), (4)
 974.02 957.255 (1), (3), 958.06 (1) and
 (3) (a)
 974.03 958.13
 974.04 958.115
 974.05 958.12
 974.06 958.07
 975.01 959.15 (1)
 975.02 959.15 (2)
 975.03 959.15 (3)
 975.04 959.15 (4)
 975.05 959.15 (5)
 975.06 959.15 (6)
 975.07 959.15 (7)

1969 Stats.	1967 Stats.
975.08	959.15 (8)
975.09	959.15 (9)
975.10	959.15 (10)
975.11	959.15 (11)
975.12	959.15 (12)
975.13	959.15 (13)
975.14	959.15 (14)
975.15	959.15 (15)
975.16	959.15 (16)
975.17	959.15 (17)
975.18	None
976.01	885.32
976.02	885.33
976.03	964.01 to 964.29
976.04	964.30
976.05	None

On criminal prosecutions for libel see notes to sec. 3, art. I; on excessive bail see notes to sec. 6, art. I; on rights of accused see notes to sec. 7, art. I; on criminal prosecutions see notes to sec. 8, art. I; on searches and seizures see notes to sec. 11, art. I; on writs of error see notes to sec. 21, art. I; on appellate jurisdiction of the supreme court see notes to sec. 3, art. VII, and notes to 251.08; on jurisdiction of circuit courts see notes to sec. 8, art. VII, and notes to 252.03; on prisons see notes to various sections of ch. 53; on paroles and pardons see notes to various sections of ch. 57; on discretionary reversal see notes to 251.09; on proceedings in criminal cases on reversal see notes to 251.17; on criminal trial jurisdiction of county courts see notes to 253.12; on jurors see notes to various sections of ch. 255; on reversible errors in criminal actions see notes to 274.37; on habeas corpus see notes to various sections of ch. 292; on witnesses and oral testimony see notes to various sections of ch. 885; on depositions, oaths and affidavits see notes to various sections of ch. 887; on documents and record evidence see notes to various sections of ch. 889; on presumptions and judicial notices see notes to various sections of ch. 891; on the criminal code (general provisions) see notes to various sections of ch. 939; and on effect of repeal of statute on actions pending see notes to 990.04.

A review of Wisconsin criminal procedure. 1966 WLR 430.

CHAPTER 967.

General Provisions.

967.01 History: 1969 c. 255; Stats. 1969 s. 967.01.

967.02 History: 1969 c. 255; Stats. 1969 s. 967.02.

967.03 History: 1969 c. 255; Stats. 1969 s. 967.03.

Comment of Judicial Council, 1969: This section is consistent with the authority found in s. 59.45 for counties other than Milwaukee county. The limitations in s. 59.46 as to the powers of assistant district attorneys in Milwaukee county should be eliminated and all assistant district attorneys in the state should have the same powers. With reference to the duties of district attorneys, see s. 59.47. [Bill 603-A]

967.04 History: 1969 c. 255; Stats. 1969 s. 967.04.

Editor's Note: This section replaced sec. 887.06, Stats. 1967, which was repealed by sec. 52, ch. 255, Laws 1969. For the history of the repealed section see Wis. Annotations, 1960, and Wis. Statutes, 1967.

On rights of accused (meet the witnesses) see notes to sec. 7, art. I.

967.05 History: 1969 c. 255; Stats. 1969 s. 967.05.

Comment of Judicial Council, 1969: This section restates existing procedural law and practice. While the Fifth amendment of the United States constitution provides, "No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, . . ." ". . . the law is well settled that the presentment or indictment requirements of the Fifth amendment are not made applicable to the states by the Fourteenth amendment". Goyer v. State, 26 Wis. 2d 244, 246, 131 NW 2d 888 citing Kennedy v. Walker (1948), 135 Conn. 262, 63 A 2d 589, affirmed, 337 U.S. 901, 69 Sup. Ct. 1047, 93 L.Ed. 1715, rehearing denied, 337 U.S. 934, 69 Sup. Ct. 1491, 93 L.Ed. 1740. [Bill 603-A]

On rights of accused (nature of accusation) see notes to sec. 7, art. I.

967.06 History: 1969 c. 255; Stats. 1969 s. 967.06.

Comment of Judicial Council, 1969: Present s. 957.26 (3), (4), (5) and (6). [Bill 603-A]

The practice in the supreme court is that in the absence of the chief justice the powers conferred on him may be exercised by the justice who has been longest a continuous member of the court, who is present and available; and application for appointment of counsel for an indigent defendant under 357.26, Stats. 1941, should be made accordingly. State v. Tyler, 238 W 589, 300 NW 754.

Before counsel can be appointed by the supreme court under 357.26, Stats. 1943, to prosecute an appeal or writ of error it must appear that there are reasonable grounds for seeking a review. Cundy v. State, 244 W 506, 12 NW (2d) 681.

A lawyer's charge for services even when based on the recommended schedule of the state bar, is always subject to the courts' determination of reasonableness. Conway v. Sauk County, 19 W (2d) 599, 120 NW (2d) 671.

Appellate counsel for the indigent in Wisconsin. Evans, 41 WBB, No. 5.

Attorney compensation on court appointments. 1964 WLR 507.

CHAPTER 968.

Commencement of Criminal Proceedings.

968.01 History: 1969 c. 255; Stats. 1969 s. 968.01.

Comment of Judicial Council, 1969: Restatement of present s. 954.02 (1) with the additional authorization for a complaint to be sworn to before a district attorney. [Bill 603-A]

Editor's Note: On the history of sec. 4776,