

CHAPTER 940

CRIMES AGAINST LIFE AND BODILY SECURITY

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LIFE.

940.01 First-degree murder. (1) Whoever causes the death of another human being with intent to kill that person or another shall be sentenced to life imprisonment.

(2) In this chapter "intent to kill" means the mental purpose to take the life of another human being.

Conviction of 1st degree murder upheld where, in the course of a robbery, defendant severely and repeatedly hit the victim with a heavy bottle. *State v Wells*, 51 W (2d) 477, 187 NW (2d) 328.

940.02 Second-degree murder. Whoever causes the death of another human being by conduct imminently dangerous to another and evincing a depraved mind, regardless of human life, may be imprisoned not less than 5 nor more than 25 years.

As to 2nd degree murder the reference is to conduct evincing a certain state of mind, not that the state of mind actually exists. *Ameen v State*, 51 W (2d) 175, 186 NW (2d) 206.

It is not correct that provocation may reduce a homicide to 2nd degree murder even though the provocation is not sufficient to reduce the offense to manslaughter. *State v Anderson*, 51 W (2d) 557, 187 NW (2d) 335.

940.03 Third-degree murder. Whoever in the course of committing or attempting to commit a felony causes the death of another human being as a natural and probable consequence of the commission of or attempt to commit the felony, may be imprisoned not more than 15 years in excess of the maximum provided by law for the felony.

See note to 940.01, citing *State v Wells*, 51 W (2d) 477, 187 NW (2d) 328.

Where defendant is found guilty of homicide occurring during commission of a felony he may be sentenced for both offenses although separate verdicts were not submitted. *Patelski v Cady*, 313 F Supp 1268.

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

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

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

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

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

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

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

(a) Is performed by a physician; and

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

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

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

See note to Art. 1, sec. 1, citing *Babbitz v McCann*, 310 F Supp 293.

See note to Art. 1, sec. 1, citing *Harling v Dept. of H & S S*, 323 F Supp 899.

State regulation of abortion 1970 WLR 933.

940.05 Manslaughter. Whoever causes the death of another human being under any of the following circumstances may be imprisoned not more than 10 years:

(1) Without intent to kill and while in the heat of passion; or

(2) Unnecessarily, in the exercise of his privilege of self-defense or defense of others or the privilege to prevent or terminate the commission of a felony; or

(3) Because such person is coerced by threats made by someone other than his coconspirator and which cause him reasonably to believe that his act is the only means of preventing imminent death to himself or another; or

(4) Because the pressure of natural physical forces causes such person reasonably to believe that his act is the only means of preventing imminent public disaster or imminent death to himself or another.

Uniform instruction No. 1140 as to self-defense approved. *Mitchell v. State*, 47 W (2d) 695, 177 NW (2d) 833.

Failure to negate the intentional nature of the killing or establish adequate provocation requires the refusal of a manslaughter instruction. *State v. Lucynski*, 48 W (2d) 232, 179 NW (2d) 889.

Where there was no evidence which would constitute either first or second degree murder a finding that defendant acted in the heat of passion will not sustain a conviction of manslaughter. *Boissonneault v. State*, 50 W (2d) 662, 184 NW (2d) 846.

A defendant is not entitled to submission of a manslaughter (self-defense) verdict when he testified that he did not intend to do the act which resulted in death. *Day v. State*, 55 W (2d) 756, 201 NW (2d) 42.

An instruction as to self-defense and one in regard to manslaughter are not mutually exclusive. Self-defense may be either a complete defense or a mitigation of murder. *Ross v. State*, 61 W (2d) 160, 211 NW (2d) 827.

940.06 Homicide by reckless conduct. (1) Whoever causes the death of another human being by reckless conduct may be fined not more than \$2,500 or imprisoned not more than 5 years or both.

(2) Reckless conduct consists of an act which creates a situation of unreasonable risk and high probability of death or great bodily harm to another and which demonstrates a conscious disregard for the safety of another and a willingness to take known chances of perpetrating an injury. It is intended that this definition embraces all of the elements of what was heretofore known as gross negligence in the criminal law of Wisconsin.

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

fined not more than \$2,500 or imprisoned not more than 5 years.

940.08 Homicide by negligent use of vehicle or weapon. (1) Whoever causes the death of another human being by a high degree of negligence in the operation or handling of a vehicle, firearm, airgun, knife or bow and arrow may be fined not more than \$1,000 or imprisoned not more than one year in county jail or both.

(2) A high degree of negligence is conduct which demonstrates ordinary negligence to a high degree, consisting of an act which the person should realize creates a situation of unreasonable risk and high probability of death or great bodily harm to another.

940.09 Homicide by intoxicated user of vehicle or firearm. Whoever by the negligent operation or handling of a vehicle, firearm or airgun and while under the influence of an intoxicant causes the death of another may be fined not more than \$2,500 or imprisoned not more than 5 years or both. No person shall be convicted under this section except upon proof of causal negligence in addition to such operation or handling while under the influence of an intoxicant.

940.12 Assisting suicide. Whoever with intent that another take his own life assists such person to commit suicide may be imprisoned not more than 10 years.

BODILY SECURITY

940.20 Battery. Whoever causes bodily harm to another by an act done with intent to cause bodily harm to that person or another without the consent of the person so harmed may be fined not more than \$200 or imprisoned not more than 6 months or both.

940.201 Abuse of children. Whoever tortures or subjects to cruel maltreatment any child may be fined not more than \$500 or imprisoned not more than one year in county jail or both. In this section, "child" means a person under 16 years of age.

940.205 Battery to peace officers; firemen. Whoever causes bodily harm to a peace officer, as defined in s. 939.22 (22), or fireman, acting in his official capacity and the person knows or has reason to know that the victim is a peace officer or fireman, by an act done with intent to cause bodily harm to the peace officer or fireman, without consent of the person so injured, may be imprisoned not more than 2 years.

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

940.206 Battery of witnesses and jurors.

Whoever causes bodily harm to a person who is or was a witness as defined in s. 943.30 (3) (b) or a grand or petit juror with intent to cause bodily harm to that person by reason of his having attended or testified as a witness or by reason of any verdict or indictment assented to by him, without consent of the person injured, may be fined not more than \$10,000 or imprisoned not more than 5 years or both.

940.21 Mayhem. Whoever, with intent to disable or disfigure another, cuts or mutilates the tongue, eye, ear, nose, lip, limb or other bodily member of another, may be fined not more than \$5,000 or imprisoned not more than 15 years or both.

940.22 Aggravated battery. Whoever intentionally causes great bodily harm to another by an act done with intent to cause bodily harm to that person or another may be fined not more than \$2,500 or imprisoned not more than 5 years or both.

While it is a question of law and not of fact as to whether injuries are sufficient to constitute the crime of aggravated battery, the question becomes one of fact and not of law where there is a factual dispute as to the nature of the injuries, and that issue is one for jury resolution. *Irby v. State*, 49 W (2d) 612, 182 NW (2d) 251.

This section must be read as though the word "great" appeared before the words "bodily harm." *State v. Gould*, 56 W (2d) 808, 202 NW (2d) 903.

940.23 Injury by conduct regardless of life. Whoever causes great bodily harm to another human being by conduct imminently dangerous to another and evincing a depraved mind, regardless of human life, may be imprisoned not more than 10 years.

The crime of injury by conduct regardless of life can be a lesser included offense under an information charging first degree murder. *Martin v. State*, 57 W (2d) 499, 204 NW (2d) 499

940.24 Injury by negligent use of weapon.

(1) Whoever causes bodily harm to another by a high degree of negligence in the operation or handling of a firearm, airgun, knife or bow and arrow, may be fined not more than \$1,000 or imprisoned not more than one year or both.

(2) A high degree of negligence is conduct which demonstrates ordinary negligence to a high degree, consisting of an act which the person should realize creates a situation of unreasonable risk and high probability of death or great bodily harm to another.

940.28 Abandonment of young child.

Whoever, with intent to abandon him, leaves any

child under the age of 6 years in a place where he may suffer because of neglect may be imprisoned not more than 3 years.

940.29 Abuse of inmates of institutions.

Any person in charge of or employed in any of the following institutions who abuses, neglects or ill-treats any person confined in or an inmate of any such institution or who knowingly permits another person to do so may be fined not more than \$500 or imprisoned not more than one year in county jail or both:

(1) A penal or correctional institution or other place of confinement; or

(2) A home for the aged; or

(3) A hospital for the mentally ill; or

(4) A school or institution for the mentally deficient; or

(5) A state school for the blind or deaf; or

(6) An institution operated by a licensed child welfare agency or by a public agency for the care of neglected, dependent, or delinquent children; or

(7) A nursing home as defined in s. 146.30

940.30 False imprisonment. Whoever intentionally confines or restrains another without his consent and with knowledge that he has no lawful authority to do so may be fined not more than \$1,000 or imprisoned not more than 2 years or both.

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

940.31 Kidnapping. (1) Whoever does any of the following may be imprisoned not more than 15 years:

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

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

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

(2) Whoever violates sub. (1) with intent to cause another to transfer property in order to obtain the release of the victim shall be sentenced to life imprisonment; but if his victim is released without permanent physical injury prior to the time the first witness is sworn at the trial the

defendant may be imprisoned not more than 30 years.

940.32 Abduction. Whoever, for any unlawful or immoral purpose, does any of the following may be imprisoned not more than 15 years:

(1) By force or threat of imminent force, takes any child under 18 years of age from his home or the custody of his parent or guardian; or

(2) Entices any child under 18 years of age from his home or the custody of his parent or guardian; or

(3) By force or threat of imminent force, detains any child under 18 years of age who is away from his home or the custody of his parent or guardian.