

## CRIMINAL CODE—CONVERSION TABLE

## 1955 CRIMINAL CODE

## CONVERSION TABLE

(Old to New)

The following table shows what happened to 1953 statute sections repealed or renumbered by ch. 696, Laws 1955. It does not include statutory sections repealed and recreated, amended, or created by the act. Statutory sections repealed and recreated or amended are treated in numerical order in the act, beginning with section 5. Statutory sections created by the act (other than those in the criminal code) are also treated in numerical order beginning with section 2 of the act. In cases where new sections are derived from old sections, this table will show that fact.

A similar table showing the source of the new criminal law sections (new to old table) is printed with chapter 696 in the 1955 session laws volume.

Please note that this table is designed to assist in tracing old into new sections and does not indicate the technical bill drafting process, e.g., repeal of the old section and separate creation of the new section. Wherever the word "None" appears in the table below, it denotes that the substance of the old section has no counterpart in the new law, but this does not necessarily mean that the conduct prohibited by the old section would not be criminal under the new law.

<i>Old section</i>	<i>New section</i>	<i>Old section</i>	<i>New section</i>
13.20	13.20 (1)	340.37	939.32
29.63 (3) (e)	29.63 (3) (d)	340.38	940.23
56.07 (4)	946.42	340.39	943.32
85.08 (36)	946.32	340.40	939.32
85.30	85.30 (1)	340.41	939.32
86.03 (5)	86.03 (6)	340.42	941.20
86.17	86.17 (1)	340.43	943.32
94.34	943.20	340.44	939.32
133.21	133.21 (1)	340.445	939.66
159.14 (1)	946.31 or 946.32	340.45	943.30
175.03	173.31	340.46	944.01
175.04	None	340.47	944.10
175.05	134.35	340.48	939.32
175.06	196.625	340.485	959.15
175.10	134.50	340.49	939.32
175.12	134.51	340.50	941.32
213.095 (2), (3)	941.12	340.51	939.30
215.385	946.31		939.32
221.20	946.31	340.52	939.30
325.26	325.34		939.32
340.01	None	340.53	941.03
340.02	940.01		943.01
340.03	940.02	340.535	941.04
340.04	940.01 or 940.02 or 940.03 or 940.05 or 940.06 or 947.07	340.54	940.31
340.05	939.05		946.71
340.06	940.01 or 940.02 or 940.06 or 941.03		940.30
340.07	940.01 or 940.02 or 940.03 or 940.06	340.55 (1)	956.01 (10)
340.08	940.02	340.55 (2)	940.32
340.09	940.03		944.12
340.095	940.04	340.56	940.31
340.10	None	340.57	940.20
340.11	940.04	340.58	940.29
340.12	940.12	340.59	None
340.13	None	340.60	941.20
340.14	940.05		939.45
340.15	940.05	340.605 (1)	940.24
340.17	940.05	340.605 (2)	941.20
340.18	940.05		29.63 (3) (d)
340.19	None	340.607	29.221
340.20	940.07	340.608	29.222
340.21	940.02 or 940.06	340.61	167.30
340.22	940.02 or 940.06 or 940.08	340.62	943.01 or 943.02
340.23	None	340.63	192.295
340.24	None	340.64	192.291
340.25	940.05	340.65	167.25
340.26	940.06	340.66	941.20
340.27	None	340.67	167.26
340.271 (1)	940.09	340.68	167.18
340.271 (2), (3)	939.65	340.69	941.20
340.28	940.08		941.22
340.28	None		941.23
340.29	939.45	340.70	167.10
340.30	939.48	340.71	192.321
340.31	None	340.72	940.20
340.32	947.07		947.01
340.33	939.30	340.73	940.31
340.34	939.05	340.74	939.05
340.35	939.30	340.75	942.04
340.36	None	340.76	None
	940.21	340.77	940.02 or 940.03 or 940.06 or 941.03
	939.32		167.151
		340.79	947.01
		340.80	941.33
		340.85	167.27
		340.86	943.02
		343.01	939.05
			943.02
		343.02	939.05
			943.03
		343.03	939.05
			943.04
		343.04	939.05
			939.32
		343.05 (1)	939.32

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Old section	New section	Old section	New section
343.05 (2)	943.05	343.43	943.01
343.06	943.02 (2)		947.01
	939.22 (28)	343.431	943.01
343.07	941.10		947.01
	85.30 (2)	343.432	943.01
	192.355		947.01
343.08	160.07	343.44	943.01
343.09	943.10		947.01
343.10	943.10	343.442	29.546
343.11	943.10	343.443	943.01
	943.11		947.01
343.12	943.10	343.45	943.01
	943.11		943.20
343.121	943.10	343.451	943.01
343.122	943.10	343.452	943.01
	943.32		943.37
343.13	None	343.453	27.012
343.131	943.12	343.454	943.01
343.14	943.20		62.18 (15) (c)
343.15	943.20	343.455	943.01
343.16	943.20		947.01
343.17	943.20	343.46	943.01
343.172	943.20		15.92
343.173	943.20	343.462	15.92
343.174	943.20	343.463	946.73
343.175	943.20		947.01
	939.32		939.65
	98.25 (2)	343.47	947.10
343.18	943.23	343.471	947.10
343.183	943.37	343.472	947.10
343.185	85.01 (9a)	343.473	174.025
343.19	943.34	343.474	947.10
343.20	943.20	343.48	30.065
	956.01 (8)	343.481	86.192
343.21	943.20	343.482	86.191
343.22	None	343.483	86.021
343.23	None	343.484	86.022
343.24	943.20	343.484	86.025
343.241	None	343.485	86.03
343.25	943.20	343.486	192.292
	943.39	343.487	134.52
343.251	132.17	343.488	134.52
343.252	946.70	343.49	None
343.253	943.20	343.50	943.20
	939.30	343.51 (1)	943.20
	939.32	343.51 (2)	30.083
343.254	21.145	343.53	943.01
343.26	134.20	343.54	943.01
343.27	943.01 or 943.03 or 943.04	343.55	943.01
343.28	939.05	343.551	None
343.29	120.44	343.56	943.38
	120.45	343.561	943.38
343.30	943.38	343.57	943.38
	943.39	343.571	943.38
343.31	943.20		943.39
343.315	943.26	343.58	None
343.32	943.20	343.59	943.38
343.321	943.25	343.60	943.38
343.322	147.225	343.61	943.38
343.33	132.18	343.62	943.38
343.331	134.25	343.63	None
343.332	134.26	343.64	943.40
343.333	134.27	343.65	943.38
343.334	134.28	343.651	132.19
343.335	134.29	343.655	28.06 (4)
343.336	134.30	343.66	132.20
343.337	134.31	343.661	943.38
343.338	134.32	343.662	943.38
343.339	134.33	343.663	943.38
343.341 (1)	None	343.664	943.38
343.341 (2)	943.22	343.665	943.38
343.35	943.20	343.666	943.38
	939.32	343.67	946.72
343.36	None	343.68	943.38
343.37	943.39	343.681	134.01
	943.40	343.682	134.02
	943.20	343.683	134.03
	943.34	343.69	943.25
343.38	943.38	343.70	21.155
343.39	943.20	343.707	86.17 (2)
343.40	None	343.71	None
343.401 (1), (2), (3)	943.24	343.72	942.05
343.401 (2m)	118.66	343.721	134.21
343.402	943.21	343.722	134.17
343.405	943.20	343.723	134.18
	939.05	343.724	134.41
	939.32	343.729	45.48
343.406	943.39	343.74 (1)	175.05 (1)
343.407	134.19	343.74 (2), (3)	946.02
343.41	943.20	343.74 (4)	939.32
	943.39	343.74 (5)	939.31
343.412	209.14	343.74 (6)	325.34
343.42	943.01	343.74 (7) to (11a)	175.05 (2) to (7)
	947.01	343.74 (13), (14)	None
343.421	29.582	346.01	946.31
343.422	943.02		939.05
343.424	943.01	346.02	946.32
		346.03	939.30
		346.06	946.10
			325.34

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Old section	New section	Old section	New section
346.07	946.10	348.09	945.04
346.08	946.10	348.091	963.02
346.09	12.50	348.092	945.01 (4)
346.10	12.51		945.02
346.11	12.54		280.20
346.12	12.56 (1)	348.10	331.056
346.13	12.56 (2)	348.11	945.04
346.14	12.56 (3)		280.20
346.15	939.05	348.12	325.34
346.16	12.56 (4)	348.13	945.02
346.17	12.52	348.14	945.02
346.18	17.03		192.15
346.19	13.60		956.01 (11)
346.20	13.61	348.16	331.055
346.205	13.62	348.17	963.021
346.21	13.63		963.04
346.22	13.64	348.171	945.02
346.23	13.65		945.03
346.24	13.66		325.34
346.245	13.67	348.172	945.03
346.25	13.68		945.04
346.26	13.69		939.05
346.27	13.70	348.173	945.03
346.28	13.71		945.04
346.29	13.70 (3)	348.174	945.02
346.295	13.72	348.175	945.03
346.30	13.73	348.176	945.03
346.31	13.74	348.177	939.05
346.32	13.75	348.178	100.12
346.33	946.44	348.179	112.05
346.34 (1)	946.44	348.18	134.15 (1)
346.34 (2)	946.46	348.19	134.16
346.35	946.44	348.20	134.15 (2)
346.36	946.45	348.201 (1)	5.012 (3)
346.37	946.12	348.201 (2)	943.33
346.38	946.40	348.201 (3)	5.05 (8m)
346.39	946.41	348.21	12.59
346.40	946.42	348.211	12.60
346.41	946.44	348.213	12.58 (1)
346.42	53.105	348.214	12.58 (2)
346.43	53.095	348.215	12.58 (3)
346.44	946.42	348.216	12.58 (4)
346.45	946.42	348.217	12.61
346.46	946.42	348.218	6.591
346.47	53.375	348.219	946.12
346.48	946.40	348.22	10.071
346.49	946.69	348.221	6.048
346.50	946.41	348.222	946.12
346.51	946.67	348.223	11.13
346.52	255.031	348.224	11.19
346.53	255.13 (3)	348.225	11.20
346.54	255.095	348.226	12.70
346.55	255.041	348.23	12.69
346.56	13.20 (2)	348.231	12.62
346.57	256.335	348.232	946.12
346.58	310.031	348.233	12.63
346.59	173.07	348.234	12.64
346.60	946.69	348.235	12.65
346.61	946.15	348.236	6.592
346.62	946.16	348.237	6.593
	331.057	348.24	12.66
346.63	946.72	348.241	12.71
346.64	180.88	348.25	12.67
347.01	946.01	348.26	12.68
347.02	947.06	348.261	946.10
347.03	None	348.262	946.10
347.04	947.06	348.263	946.10
347.05	946.40	348.264	70.501
347.06	946.12	348.265	70.502
347.07	21.11	348.266	70.503
	59.24	348.267	16.301
347.08	None	348.268	12.57
347.09	None	348.269	16.302
347.10	943.01	348.27	16.303
347.11	None	348.271	12.53
347.12	None	348.272	16.441
347.13	None	348.273	16.761
347.14	946.03	348.28	946.12
347.15	946.03		946.13
347.16	None	348.281	946.12
347.17	946.03	348.29	946.12
347.18	946.03		946.14
348.01	945.03	348.291	946.12
	945.04	348.30	946.13
348.02	945.03	348.301	946.12
	945.05	348.31	946.10
	939.05		17.03
348.03	945.03	348.311	946.11
	945.05		12.55
348.04	945.05	348.312	196.675
348.05	None	348.313	946.11
348.06	945.10		12.55
348.07	945.03	348.32	18.04
	945.05	348.325	256.295
348.08	945.02	348.33	946.12
348.085	280.20	348.34	29.61 (5)
	945.01	348.35	947.01
	945.02	348.351	947.02
		348.352	None

Old section	New section	Old section	New section
348.353	66.112	351.15	325.34
348.355	66.112	351.16	944.33
348.36	134.36	351.17	939.03
348.361	134.37		956.01
348.362	134.38	351.18	325.18 (4)
348.37	134.39	351.19	944.30
348.38	134.40		944.31
348.381	29.641		944.33
348.382	29.643		944.35
348.383	29.642		325.34
348.384	29.644	351.21	944.06
348.386 (1), (1a), (2)	943.13	351.22	940.04
348.386 (3)	134.60		939.30
348.387	943.13		939.32
348.388	29.515	351.23	940.04
348.389	29.515		939.32
348.39	29.515	351.235	151.10
348.40	939.31	351.24	946.63
348.401	133.01 (3)	351.25	939.65
	133.21 (2)	351.27	940.23
348.402	943.20	351.29	946.71
348.403	None	351.32	940.20
348.41	942.01	351.33	944.20
348.411	942.01		947.01
348.412	942.02	351.34	944.11
348.42	31.025	351.35	944.34
348.421	29.29 (3)		944.30
348.422	30.082		944.31
348.423	29.29 (3)		280.16
348.424	30.06 (5a)	351.36	963.021
348.425	23.095	351.37	None
348.426	75.375	351.38	944.21
348.427	175.25		944.22
348.43	None		944.23
348.44	947.01	351.39	143.075
348.46	None	351.40	944.17
348.47	None	351.41	944.11
348.471	161.271	351.42	155.10
348.472	134.58	351.43	157.60
348.473	208.36	351.50	103.85
348.474	208.37	351.51	331.275
348.475	208.38	351.52	None
348.476	215.40	351.53	947.01
348.477	943.35	351.54	176.05 (9m)
348.478	943.35	351.55	947.01
348.479	946.06		945.02
348.48	946.05		954.47
348.481	946.06	351.56	None
348.482	946.05	351.57	175.20
348.483	946.05	351.59	947.03
	946.06		66.051
348.484	None	351.60	947.04
348.485	946.04	351.62	947.04
348.486	134.05	351.63	947.04
348.487	134.06	351.64	947.01
348.488	209.15	351.65	941.13
348.49	134.57	351.66	None
348.52	None	352.20	143.10 or
348.53	134.45		940.20 or
348.54	134.04		940.22
348.55	36.50	352.21	None
348.56	175.10	352.22	939.32
348.57 (1) (a), (1) (b),		352.48	175.15
(2)	945.08	352.50 (2) to (5)	134.65
348.57 (1) (c)	945.07	352.50 (6)	None
348.57 (3)	325.34	352.67	176.405
348.58	942.03	353.01	939.73
348.60	946.63		957.25
348.61	None		959.01
351.01	944.16	353.05	939.05
	939.74		939.66
351.02	944.05	353.08	946.47
351.03	944.05	353.13	955.395
351.04	944.20	353.15	939.05
351.05	944.15	353.16	954.021
	944.10	353.17	954.021
351.06	944.02	353.20	939.74
	944.06	353.21	939.74
	944.15	353.22	939.74
	944.16	353.23	939.74
351.07	944.15	353.25	959.055
351.08	944.32	353.27 (1)	939.61
	939.05	353.27 (2)	959.044
351.09	944.32	353.28	939.03
	939.05	353.29	939.03
351.10	944.32	353.31	939.60
	939.05	353.33	939.46
351.11	944.32 or	355.32	955.31
	940.30 or	359.12 (1)	939.62 (2)
	941.31	359.12 (2)	959.12 (1)
351.12	944.34	359.12 (3)	939.62 (1)
351.13	944.32	359.12 (4)	959.12 (2)
	939.05	359.17	946.62
351.14	944.35		

NOTE: The new criminal code is effective July 1, 1956. As to offenses committed prior to that date, consult the 1953 statutes and check the table of sections affected in the 1955 session law volumes for any changes in the 1953 laws which might be effective prior to July 1, 1956.

**TITLE XLV.**  
**Criminal Code.**

**CHAPTER 939.**

**GENERAL PROVISIONS.**

<b>PRELIMINARY PROVISIONS.</b>	
939.01 Name and interpretation of code.	939.48 Self-defense and defense of others.
939.03 Jurisdiction of state over crime.	939.49 Defense of property.
939.05 Parties to crime.	<b>PENALTIES.</b>
939.10 Common-law crimes abolished; common-law rules preserved.	939.60 Felony and misdemeanor defined.
939.12 Crime defined.	939.61 Penalty when none expressed.
939.14 Criminal conduct or contributory negligence of victim no defense.	939.62 Increased penalty for habitual criminality.
939.20 Provisions which apply only to the criminal code.	<b>RIGHTS OF THE PROSECUTION.</b>
939.22 Words and phrases defined.	939.65 Prosecution under more than one section permitted.
939.23 Criminal intent.	939.66 Conviction of included crime permitted.
<b>INCHOATE CRIMES.</b>	<b>RIGHTS OF THE ACCUSED.</b>
939.30 Solicitation.	939.70 Presumption of innocence and burden of proof.
939.31 Conspiracy.	939.71 Limitation on the number of convictions.
939.32 Attempt.	939.72 No conviction of both inchoate and completed crime.
<b>DEFENSES TO CRIMINAL LIABILITY.</b>	939.73 Criminal penalty permitted only on conviction.
939.42 Intoxication.	939.74 Time limitations on prosecutions.
939.43 Mistake.	
939.45 Privilege.	
939.46 Coercion.	
939.47 Necessity.	

**PRELIMINARY PROVISIONS.**

**939.01 Name and interpretation of code.** Title XLV may be cited as the criminal code but shall not be interpreted as a unit. Crimes committed prior to July 1, 1956 are not affected by the criminal code.

**History:** 1955 c. 696.

**939.03 Jurisdiction of state over crime.** (1) A person is subject to prosecution and punishment under the law of this state if:

- (a) He commits a crime, any of the constituent elements of which takes place in this state; or
- (b) While out of this state, he aids and abets, conspires with, or advises, incites, commands, or solicits another to commit a crime in this state; or
- (c) While out of this state, he does an act with intent that it cause in this state a consequence set forth in a section defining a crime; or
- (d) While out of this state, he steals and subsequently brings any of the stolen property into this state.

(2) In this section "state" includes area within the boundaries of the state, and area over which the state exercises concurrent jurisdiction under Article IX, section 1, Wisconsin constitution.

**History:** 1955 c. 696.

**939.05 Parties to crime.** (1) Whoever is concerned in the commission of a crime is a principal and may be charged with and convicted of the commission of the crime although he did not directly commit it and although the person who directly committed it has not been convicted or has been convicted of some other degree of the crime or of some other crime based on the same act.

(2) A person is concerned in the commission of the crime if he:

- (a) Directly commits the crime; or
- (b) Intentionally aids and abets the commission of it; or
- (c) Is a party to a conspiracy with another to commit it or advises, hires, counsels or otherwise procures another to commit it. Such a party is also concerned in the commission of any other crime which is committed in pursuance of the intended crime and which under the circumstances is a natural and probable consequence of the intended crime. This

paragraph does not apply to a person who voluntarily changes his mind and no longer desires that the crime be committed and notifies the other parties concerned of his withdrawal within a reasonable time before the commission of the crime so as to allow the others also to withdraw.

**History:** 1955 c. 696.

The evidence as to a plan agreed on by all defendants, and as to 2 defendants breaking into and entering an office in the nighttime with the intention to commit the crime of larceny. *State v. Kopacka*, 260 W 505, 50 NW (2d) 917.

**939.10 Common-law crimes abolished; common-law rules preserved.** Common-law crimes are abolished. The common-law rules of criminal law not in conflict with the criminal code are preserved.

**History:** 1955 c. 696.

**939.12 Crime defined.** A crime is conduct which is prohibited by state law and punishable by fine or imprisonment or both. Conduct punishable only by a forfeiture is not a crime.

**History:** 1955 c. 696.

**939.14 Criminal conduct or contributory negligence of victim no defense.** It is no defense to a prosecution for a crime that the victim also was guilty of a crime or was contributorily negligent.

**History:** 1955 c. 696.

**939.20 Provisions which apply only to the criminal code.** Sections 939.22 and 939.23 apply only to crimes defined in the criminal code. Other sections in ch. 939 apply to crimes defined in other chapters of the statutes as well as to those defined in the criminal code.

**History:** 1955 c. 696.

**939.22 Words and phrases defined.** In the criminal code, the following words and phrases have the designated meanings unless the context of a specific section manifestly requires a different construction:

(2) "Airgun" means a weapon which expels a missile by the expansion of compressed air or other gas.

(4) "Bodily harm" means physical pain or injury, illness, or any impairment of physical condition.

(6) "Crime" has the meaning designated in s. 939.12.

(8) "Criminal intent" has the meaning designated in s. 939.23.

(10) "Dangerous weapon" means any firearm, whether loaded or unloaded, or any device designed as a weapon and capable of producing death or great bodily harm, or any other device or instrumentality which, in the manner it is used or intended to be used, is calculated or likely to produce death or great bodily harm.

(12) "Felony" has the meaning designated in s. 939.60.

(14) "Great bodily harm" means bodily injury which creates a high probability of death, or which causes serious permanent disfigurement, or which causes a permanent or protracted loss or impairment of the function of any bodily member or organ or other serious bodily injury.

(16) "Human being" when used in the homicide sections means one who has been born alive.

(18) "Intentionally" has the meaning designated in s. 939.23.

(20) "Misdemeanor" has the meaning designated in s. 939.60.

(22) "Peace officer" means any person vested by law with a duty to maintain public order or to make arrests for crime, whether that duty extends to all crimes or is limited to specific crimes.

(24) "Place of prostitution" means any place where a female habitually engages in nonmarital acts of sexual intercourse or sexual perversion for money.

(28) "Property of another" means property in which a person other than the actor has a legal interest which the actor has no right to defeat or impair, even though the actor may also have a legal interest in the property.

(30) "Public officer"; "public employe". A "public officer" is any person appointed or elected according to law to discharge a public duty for the state or one of its subordinate governmental units. A "public employe" is any person, not an officer, who performs any official function on behalf of the state or one of its subordinate governmental units and who is paid from the public treasury of the state or subordinate governmental unit.

(32) "Reasonably believes" means that the actor believes that a certain fact situation exists and such belief under the circumstances is reasonable even though erroneous.

(36) "Sexual intercourse" requires only vulvar penetration and does not require emission.

(40) "Transfer" means any transaction involving a change in possession of any property, or a change of right, title, or interest to or in any property.

(42) "Under the influence of an intoxicant" means that the actor's ability to operate a vehicle or handle a firearm is materially impaired because of his consumption of an alcoholic beverage, a narcotic drug or other intoxicating substance.

(44) "Vehicle" means any self-propelled device for moving persons or property or pulling implements from one place to another, whether such device is operated on land, rails, water, or in the air.

(46) "With intent" has the meaning designated in s. 939.23.

(48) "Without consent" means no consent in fact or that consent is given for one of the following reasons:

(a) Because the actor put the victim in fear by the use or threat of imminent use of physical violence on him, or on a person in his presence, or on a member of his immediate family; or

(b) Because the actor purports to be acting under legal authority; or

(c) Because the victim does not understand the nature of the thing to which he consents, either by reason of ignorance or mistake of fact or of law other than criminal law or by reason of youth or defective mental condition, whether permanent or temporary.

**History:** 1955 c. 696.

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

**939.23 Criminal intent.** (1) When criminal intent is an element of a crime in the criminal code, such intent is indicated by the term "intentionally", the phrase "with intent to", the phrase "with intent that", or some form of the verbs "know" or "believe".

(2) "Know" requires only that the actor believes that the specified fact exists.

(3) "Intentionally" means that the actor either has a purpose to do the thing or cause the result specified or believes that his act, if successful, will cause that result. In addition, except as provided in sub. (6), the actor must have knowledge of those facts which are necessary to make his conduct criminal and which are set forth after the word "intentionally".

(4) "With intent to" or "with intent that" means that the actor either has a purpose to do the thing or cause the result specified or believes that his act, if successful, will cause that result.

(5) Criminal intent does not require proof of knowledge of the existence or constitutionality of the section under which he is prosecuted or the scope or meaning of the terms used in that section.

(6) Criminal intent does not require proof of knowledge of the age of a minor even though age is a material element in the crime in question.

**History:** 1955 c. 696.

The intent of a defendant in a criminal prosecution can seldom be established by direct and positive proof. *State v. Schlueter*, 262 W 602, 55 NW (2d) 878.

The presumption that a person intends the natural and probable consequences of his acts applies in criminal cases. A proper instruction does not remove the presumption of innocence. *State v. Vinson*, 269 W 305, 68 NW (2d) 712, 70 NW (2d) 1.

#### INCHOATE CRIMES.

**939.30 Solicitation.** Whoever, with intent that a felony be committed, advises another to commit that crime under circumstances which indicate unequivocally that he has such intent may be fined not more than \$2,500 or imprisoned not to exceed the maximum provided for the completed crime, but in no event to exceed 5 years, or both; except that for a solicitation to commit a crime for which the penalty is life imprisonment the actor may be imprisoned not more than 10 years.

**History:** 1955 c. 696.

A person might be guilty of counseling or advising another to resist an officer in violation of 346.39 (Stats. 1949) even though such other refused to follow such counsel or advice. To "counsel or advise" it is not necessary to participate by any physical act in the resistance itself. *Teske v. State*, 256 W 440, 41 NW (2d) 642.

Under evidence which would support charges against pickets of resisting an officer as well as charges against another defendant of counseling and advising the pickets to resist, the jury could find such defendant guilty of the charge of counseling or advising to resist even though acquitting the pickets of the charge of resisting, logical consistency in verdicts in criminal cases not being required. *Teske v. State*, 256 W 440, 41 NW (2d) 642.

**939.31 Conspiracy.** Whoever, with intent that a crime be committed, agrees or combines with another for the purpose of committing that crime may, if one or more of the parties to the conspiracy does an act to effect its object, be fined or imprisoned or both not to exceed the maximum provided for the completed crime; except that for a

conspiracy to commit a crime for which the penalty is life imprisonment, the actor may be imprisoned not more than 30 years.

**History:** 1955 c. 696.

**939.32 Attempt.** (1) Whoever attempts to commit a felony or a battery as defined by s. 940.20 or theft as defined by s. 943.20 may be fined or imprisoned or both not to exceed one-half the maximum penalty for the completed crime; except that for an attempt to commit a crime for which the penalty is life imprisonment, the actor may be imprisoned not more than 30 years.

(2) An attempt to commit a crime requires that the actor have an intent to perform acts and attain a result which, if accomplished, would constitute such crime and that he does acts toward the commission of the crime which demonstrate unequivocally, under all the circumstances, that he formed that intent and would commit the crime except for the intervention of another person or some other extraneous factor.

**History:** 1955 c. 696.

To establish the offense of assault with a dangerous weapon with intent to murder under 340.40 (Stats. 1953), it was not incumbent on the state to establish that the assault was made with a steel-headed hammer, as alleged in the information, the testimony as to the victim's suffering a skull fracture caused by a blunt instrument being sufficient to show that whatever instrument was used was a dangerous weapon, and it being immaterial whether that weapon was in fact the hammer found at the scene of the assault, or some other object. The evidence of the defendant's intent to murder was sufficient to support the verdict, such intent being inferable from the fact that the blow was sufficient to cause a skull fracture, and testimony of the victim that her assailant said, "Not dead yet, eh," as he assaulted her a second time. *State v. Johnson*, 261 W 77, 51 NW (2d) 491.

In a prosecution under 340.41, Stats. 1953, the burden was on the prosecution to prove that the accused had an intent to do great bodily harm or to show facts from which it may be presumed. Evidence of the violence of the defendant's attack on the victim, the continuation of the attack by kicking while the victim lay helpless on the floor, the serious injuries inflicted, and the disproportion in size and age of the 2 men, and the inferences which it was the province of the jury to draw from the evidence, established beyond a reasonable doubt that the assault was made with the intent to inflict great bodily harm. *State v. Vinson*, 269 W 305, 68 NW (2d) 712, 70 NW (2d) 1.

#### DEFENSES TO CRIMINAL LIABILITY.

**939.42 Intoxication.** An intoxicated or a drugged condition of the actor is a defense only if such condition:

(1) Is involuntarily produced and renders the actor incapable of distinguishing between right and wrong in regard to the alleged criminal act at the time the act is committed; or

(2) Negatives the existence of a state of mind essential to the crime.

**History:** 1955 c. 696.

**939.43 Mistake.** (1) An honest error, whether of fact or of law other than criminal law, is a defense if it negatives the existence of a state of mind essential to the crime.

(2) A mistake as to the age of a minor or as to the existence or constitutionality of the section under which the actor is prosecuted or the scope or meaning of the terms used in that section is not a defense.

**History:** 1955 c. 696.

**939.45 Privilege.** The fact that the actor's conduct is privileged, although otherwise criminal, is a defense to prosecution for any crime based on that conduct. The defense of privilege can be claimed under any of the following circumstances:

(1) When the actor's conduct occurs under circumstances of coercion or necessity so as to be privileged under s. 939.46 or 939.47; or

(2) When the actor's conduct is in defense of persons or property under any of the circumstances described in s. 939.48 or 939.49; or

(3) When the actor's conduct is in good faith and is an apparently authorized and reasonable fulfillment of any duties of a public office; or

(4) When the actor's conduct is a reasonable accomplishment of a lawful arrest; or

(5) When the actor's conduct is reasonable discipline of a minor by his parent or a person in loco parentis; or

(6) When for any other reason the actor's conduct is privileged by the statutory or common law of this state.

**History:** 1955 c. 696.

**939.46 Coercion.** (1) A threat by a person other than the actor's co-conspirator which causes the actor reasonably to believe that his act is the only means of preventing imminent death or great bodily harm to himself or another and which causes him so to act is a defense to a prosecution for any crime based on that act except that if the prosecution is for murder the degree of the crime is reduced to manslaughter.

(2) It is no defense to a prosecution of a married woman that the alleged crime was committed by command of her husband nor is there any presumption of coercion when a

crime is committed by a married woman in the presence of her husband. Married women shall be judged according to the standard set out in sub. (1).

**History:** 1955 c. 696.

**939.47 Necessity.** Pressure of natural physical forces which causes the actor reasonably to believe that his act is the only means of preventing imminent public disaster, or imminent death or great bodily harm to himself or another and which causes him so to act, is a defense to a prosecution for any crime based on that act except that if the prosecution is for murder the degree of the crime is reduced to manslaughter.

**History:** 1955 c. 696.

**939.48 Self-defense and defense of others.** (1) A person is privileged to threaten or intentionally use force against another for the purpose of preventing or terminating what he reasonably believes to be an unlawful interference with his person by such other person. The actor may intentionally use only such force or threat thereof as he reasonably believes is necessary to prevent or terminate the interference. He may not intentionally use force which is intended or likely to cause death or great bodily harm unless he reasonably believes that such force is necessary to prevent imminent death or great bodily harm to himself.

(2) Provocation affects the privilege of self-defense as follows:

(a) A person who engages in unlawful conduct of a type likely to provoke others to attack him and thereby does provoke an attack is not entitled to claim the privilege of self-defense against such attack, except when the attack which ensues is of a type causing him to reasonably believe that he is in imminent danger of death or great bodily harm. In such a case, he is privileged to act in self-defense, but he is not privileged to resort to the use of force intended or likely to cause death to his assailant unless he reasonably believes he has exhausted every other reasonable means to escape from or otherwise avoid death or great bodily harm at the hands of his assailant.

(b) The privilege lost by provocation may be regained if the actor in good faith withdraws from the fight and gives adequate notice thereof to his assailant.

(c) A person who provokes an attack, whether by lawful or unlawful conduct, with intent to use such an attack as an excuse to cause death or great bodily harm to his assailant is not entitled to claim the privilege of self-defense.

(3) The privilege of self-defense extends not only to the intentional infliction of harm upon a real or apparent wrongdoer, but also to the unintended infliction of harm upon a third person, except that if such unintended infliction of harm amounts to the crime of injury by conduct regardless of life, injury by negligent use of weapon, homicide by reckless conduct or homicide by negligent use of vehicle or weapon, the actor is liable for whichever one of those crimes is committed.

(4) A person is privileged to defend a third person from real or apparent unlawful interference by another under the same conditions and by the same means as those under and by which he is privileged to defend himself from real or apparent unlawful interference, provided that he reasonably believes that the facts are such that the third person would be privileged to act in self-defense and that his intervention is necessary for the protection of the third person.

(5) A person is privileged to use force against another if he reasonably believes that to use such force is necessary to prevent such person from committing suicide, but this privilege does not extend to the intentional use of force intended or likely to cause death.

(6) In this section "unlawful" means either tortious or expressly prohibited by criminal law or both.

**History:** 1955 c. 696.

**939.49 Defense of property.** (1) A person is privileged to threaten or intentionally use force against another for the purpose of preventing or terminating what he reasonably believes to be an unlawful interference with his property. Only such degree of force or threat thereof may intentionally be used as the actor reasonably believes is necessary to prevent or terminate the interference. It is not reasonable to intentionally use force intended or likely to cause death or great bodily harm for the sole purpose of defense of one's property.

(2) A person is privileged to defend a third person's property from real or apparent unlawful interference by another under the same conditions and by the same means as those under and by which he is privileged to defend his own property from real or apparent unlawful interference, provided that he reasonably believes that the facts are such as would give the third person the privilege to defend his own property, that his intervention is necessary for the protection of the third person's property, and that the third person whose property he is protecting is a member of his immediate family or household or a person whose property he has a legal duty to protect.

(3) In this section "unlawful" means either tortious or expressly prohibited by criminal law or both.

**History:** 1955 c. 696.

PENALTIES.

**939.60 Felony and misdemeanor defined.** A crime punishable by imprisonment in the state prison is a felony. Every other crime is a misdemeanor.

**History:** 1955 c. 696.

**939.61 Penalty when none expressed.** Common-law penalties are abolished. Whenever a person is convicted of a crime for which no penalty is expressed, he may be fined not more than \$250 or imprisoned not more than one year in county jail.

**History:** 1955 c. 696.

**939.62 Increased penalty for habitual criminality.** (1) If the actor is a repeater, as that term is defined in sub. (2), and the present conviction is for any crime for which imprisonment may be imposed (except for an escape under s. 946.42) the maximum term of imprisonment prescribed by law for that crime may be increased as follows:

(a) A maximum term of one year or less may be increased to not more than 3 years.

(b) A maximum term of more than one year but not more than 10 years may be increased by not more than 2 years if the prior convictions were for misdemeanors and by not more than 6 years if the prior conviction was for a felony.

(c) A maximum term of not more than 10 years may be increased by not more than 2 years if the prior convictions were for misdemeanors and by not more than 10 years if the prior conviction was for a felony.

**Note:** (1) (c) reads: "A maximum term of not more than 10 years" etc. The word "not" was erroneously inserted in the enrolled act (1955 c. 696). "A maximum term of more than 10 years" is meant and the bill (814-A) so reads. Maximum terms of not more than 10 years are covered by (1) (b).

(2) The actor is a repeater if he was convicted of a felony during the 5-year period immediately preceding the commission of the crime for which he presently is being sentenced, or if he was convicted of a misdemeanor on 3 separate occasions during that same period, which convictions remain of record and unreversed. It is immaterial that sentence was stayed, withheld or suspended, or that he was pardoned, unless such pardon was granted on the ground of innocence. In computing the preceding 5-year period, time which the actor spent in actual confinement serving a criminal sentence shall be excluded.

(3) In this section "felony" and "misdemeanor" have the following meanings:

(a) In case of crimes committed in this state, the terms do not include motor vehicle offenses under ch. 85 and offenses handled through juvenile court proceedings under ch. 48, but otherwise have the meanings designated in s. 939.60.

(b) In case of crimes committed in other jurisdictions, the terms do not include those crimes which are equivalent to motor vehicle offenses under ch. 85 or to offenses handled through juvenile court proceedings under ch. 48. Otherwise, felony means a crime which under the laws of that jurisdiction carries a prescribed maximum penalty of imprisonment in a prison or penitentiary for one year or more. Misdemeanor means a crime which does not carry a prescribed maximum penalty sufficient to constitute it a felony and includes crimes punishable only by a fine.

**History:** 1955 c. 696.

**Cross Reference:** For procedure, see 959.12.

Where a defendant had been convicted of the prior offense of robbery by means of firearms and was convicted in the instant prosecution of violations of the game laws, he could be sentenced either under the general repeater statute or under the game-law penalty statute, at the election of the court having jurisdiction. *State v. Meyer*, 258 W 326, 46 NW (2d) 341.

In a prosecution for violations of the game laws, where a prior conviction for robbery by means of firearms was alleged in the information, and the defendant waived the reading of the information but did not admit any of the allegations thereof, permitting the state to produce evidence of the prior conviction, in the presence of the jury, shortly after the trial began, and before the defendant had taken the stand, was proper. If former convictions are alleged and admitted, then they are proved within the meaning of the repeater statute and no evidence of the former convictions should thereafter be received nor comment to the jury be permitted. *State v. Meyer*, 258 W 326, 46 NW (2d) 341.

Court which has criminal jurisdiction only of offenses not punishable in the state prison cannot impose repeater sentence under 359.12 (3) (a) (Stats. 1949). 39 Atty. Gen. 340.

RIGHTS OF THE PROSECUTION.

**939.65 Prosecution under more than one section permitted.** If an act forms the basis for a crime punishable under more than one statutory provision, prosecution may proceed under any or all such provisions.

**History:** 1955 c. 696.

In a prosecution under 340.271 (Stats. 1951), if 2 counts are submitted to the jury, (1) whether the defendant operated a motor vehicle while under the influence of liquor, causing the death, and (2) whether the defendant operated a motor vehicle in such a reckless and negligent manner as to cause the death, the court should instruct the jury that if it finds the defendant guilty on the first count, it should make no finding on the second. *State v. Resler*, 262 W 285, 55 NW (2d) 35.

**939.66 Conviction of included crime permitted.** Upon prosecution for a crime, the actor may be convicted of either the crime charged or an included crime, but not both. An included crime may be any of the following:

- (1) A crime which does not require proof of any fact in addition to those which must be proved for the crime charged; or
- (2) A crime which is a less serious type of criminal homicide than the one charged; or
- (3) A crime which is the same as the crime charged except that it requires recklessness or negligence while the crime charged requires a criminal intent; or
- (4) An attempt in violation of s. 939.32 to commit the crime charged; or
- (5) The crime of attempted battery when the crime charged is rape, robbery, mayhem or aggravated battery or an attempt to commit any of them.

**History:** 1955 c. 696.

In a prosecution under 340.41, Stats. 1953, it is not error if the court does not submit a question on assault and battery as an alternative verdict to assault with intent to do great bodily harm. Nor is it error to submit a question on "simple assault", particularly where defendant requested such submission. *State v. Vinson*, 289 W 305, 68 NW (2d) 712, 70 NW (2d) 1.

#### RIGHTS OF THE ACCUSED.

**939.70 Presumption of innocence and burden of proof.** No provision of the criminal code shall be construed as changing the existing law with respect to presumption of innocence or burden of proof.

**History:** 1955 c. 696.

**939.71 Limitation on the number of convictions.** If an act forms the basis for a crime punishable under more than one statutory provision of this state or under a statutory provision of this state and the laws of another jurisdiction, a conviction or acquittal on the merits under one provision bars a subsequent prosecution under the other provision unless each provision requires proof of a fact for conviction which the other does not require.

**History:** 1955 c. 696.

**939.72 No conviction of both inchoate and completed crime.** A person shall not be convicted under both:

- (1) Section 939.30 for solicitation and s. 939.05 as a party to a crime which is the objective of the solicitation; or
- (2) Section 939.31 for conspiracy and s. 939.05 as a party to a crime which is the objective of the conspiracy; or
- (3) Section 939.32 for attempt and the section defining the completed crime.

**History:** 1955 c. 696.

**939.73 Criminal penalty permitted only on conviction.** A penalty for the commission of a crime may be imposed only after the actor has been duly convicted in a court of competent jurisdiction.

**History:** 1955 c. 696.

**939.74 Time limitations on prosecutions.** (1) Except as provided in sub. (2), prosecution for a felony must be commenced within 6 years and prosecution for a misdemeanor or for adultery within 3 years after the commission thereof. Within the meaning of this section, a prosecution has commenced when a warrant or summons is issued, an indictment is found, or an information is filed.

(2) Notwithstanding that the time limitation under sub. (1) has expired:

- (a) A prosecution for murder may be commenced at any time;
- (b) A prosecution for theft against one who obtained possession of the property lawfully and subsequently misappropriated it may be commenced within one year after discovery of the loss by the aggrieved party, but in no case shall this provision extend the time limitation in sub. (1) by more than 5 years.

(3) In computing the time limited by this section, the time during which the actor was not publicly a resident within this state or during which a prosecution against him for the same act was pending shall not be included. A prosecution is pending when a warrant or a summons has been issued, an indictment has been found, or an information has been filed.

**History:** 1955 c. 696.