

CHAPTER 943

CRIMES AGAINST PROPERTY

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DAMAGE.

943.01 Criminal damage to property. (1) Whoever intentionally causes damage to any physical property of another without the person's consent is guilty of a Class A misdemeanor.

(2) Any person violating sub. (1) under the following circumstances is guilty of a Class D felony:

(a) The property damaged is a vehicle or highway as defined in s. 941.03 (2) and the damage is of a kind which is likely to cause injury to a person or further property damage; or

(b) The property damaged belongs to a public utility or common carrier and the damage is of a kind which is likely to impair the services of the public utility or common carrier; or

(c) The property damaged belongs to a person who is or was a witness as defined in s. 943.30 (3) (b) or a grand or petit juror and the damage was caused by reason of the owner's having attended or testified as a witness or by reason of any verdict or indictment assented to by him.

(d) If the total property damaged in violation of this section is reduced in value by more than \$1,000. For the purposes of this paragraph, property is reduced in value by the amount which it would cost either to repair or replace it, whichever is less.

(3) Where more than one item of property is damaged pursuant to a single intent and design,

the damage to all the property may be prosecuted as a single crime.

(4) In any case of criminal damage involving more than one act of criminal damage but prosecuted as a single crime, it is sufficient to allege generally criminal damage to property committed between certain dates. On the trial, evidence may be given of any such criminal damage committed on or between the dates alleged.

History: 1977 c. 173.

The evidence was insufficient to prove that defendant intended to criminally damage property worth more than \$1,000 at the time he entered the premises where no evidence was introduced as to what amount of damage could be expected to flow from the defendant's insertion of the shovel into the generator and the extent of potential damage was neither a matter of common knowledge of which the court could take judicial notice nor a fact capable of determination by resort to easily accessible sources of information. *Gilbertson v. State*, 69 W (2d) 587, 230 NW (2d) 874.

943.02 Arson of buildings; damage of property by explosives. (1) Whoever does any of the following is guilty of a Class B felony:

(a) By means of fire, intentionally damages any building of another without his consent; or

(b) By means of fire, intentionally damages any building with intent to defraud an insurer of that building; or

(c) By means of explosives, intentionally damages any property of another without his consent.

(2) In this section "building of another" means a building in which a person other than the actor has a legal or equitable interest which the actor has no right to defeat or impair, even

though the actor may also have a legal or equitable interest in the building. Proof that the actor recovered or attempted to recover on a policy of insurance by reason of the fire is relevant but not essential to establish his intent to defraud the insurer.

History: 1977 c. 173.

943.03 Arson of property other than building. Whoever, by means of fire, intentionally damages any property (other than a building) of another without the person's consent, if the property is of the value of \$100 or more, is guilty of a Class E felony.

History: 1977 c. 173.

943.04 Arson with intent to defraud. Whoever, by means of fire, damages any property (other than a building) with intent to defraud an insurer of that property is guilty of a Class D felony. Proof that the actor recovered or attempted to recover on a policy of insurance by reason of the fire is relevant but not essential to establish the actor's intent to defraud the insurer.

History: 1977 c. 173.

943.05 Placing of combustible materials an attempt. Whoever places any combustible or explosive material or device in or near any property with intent to set fire to or blow up such property is guilty of an attempt to violate either s. 943.01, 943.02, 943.03 or 943.04, depending on the facts of the particular case.

943.06 Molotov cocktails. (1) As used in this section, "fire bomb" means a breakable container containing a flammable liquid with a flash point of 150 degrees Fahrenheit or less, having a wick or similar device capable of being ignited, but does not mean a device commercially manufactured primarily for the purpose of illumination.

(2) Whoever possesses, manufactures, sells, offers for sale, gives or transfers a fire bomb is guilty of a Class E felony.

(3) This section shall not prohibit the authorized use or possession of any such device by a member of the armed forces or by firemen or law enforcement officers.

History: 1977 c. 173.

943.07 Criminal damage to railroads. (1) Whoever intentionally causes damage or who causes another person to damage, tamper, change or destroy any railroad track, switch, bridge, trestle, tunnel or signal or any railroad property used in providing rail services, which could cause an injury, accident or derailment is guilty of a Class A misdemeanor.

(2) Whoever intentionally shoots a firearm at any portion of a railroad train, car, caboose or engine is guilty of a Class A misdemeanor.

(3) Whoever intentionally throws, shoots or propels any stone, brick or other missile at any railroad train, car, caboose or engine is guilty of a Class B misdemeanor.

(4) Whoever intentionally throws or deposits any type of debris or waste material on or along any railroad track or right-of-way which could cause an injury or accident is guilty of a Class B misdemeanor.

History: 1975 c. 314; 1977 c. 173.

TRESPASS.

943.10 Burglary. (1) Whoever intentionally enters any of the following places without the consent of the person in lawful possession and with intent to steal or commit a felony in such place is guilty of a Class C felony:

- (a) Any building or dwelling; or
- (b) An enclosed railroad car; or
- (c) An enclosed portion of any ship or vessel;

or

(d) A locked enclosed cargo portion of a truck or trailer; or

(e) A motor home or other motorized type of home or a trailer home, whether or not any person is living in any such home; or

(f) A room within any of the above.

(2) Whoever violates sub. (1) under any of the following circumstances is guilty of a Class B felony:

(a) While armed with a dangerous weapon;

or

(b) While unarmed, but arms himself with a dangerous weapon while still in the burglarized enclosure; or

(c) While in the burglarized enclosure opens, or attempts to open, any depository by use of an explosive; or

(d) While in the burglarized enclosure commits a battery upon a person lawfully therein.

(3) For the purpose of this section, entry into a place during the time when it is open to the general public is with consent.

History: 1977 c. 173, 332.

Items stolen may be introduced in evidence in a prosecution for burglary since they tend to prove that entry was made with intent to steal. *Abraham v. State*, 47 W (2d) 44, 176 NW (2d) 349.

Since attempted robbery requires proof of elements in addition to those elements required to prove burglary, they are separate and distinct crimes; hence defendants' conviction and sentence for both criminal offenses arising out of the same factual transaction could not be successfully assailed. *State v. DiMaggio*, 49 W (2d) 565, 182 NW (2d) 466.

The state need not prove that the defendant knew his entry was without consent. *Hanson v. State*, 52 W (2d) 396, 190 NW (2d) 129.

The unexplained possession of recently stolen goods raises an inference that the possessor is guilty of theft and also of burglary if the goods were stolen in a burglary and calls for an

explanation of how the possessor obtained the property *Gautreaux v. State*, 52 W (2d) 489, 190 NW (2d) 542.

An information is defective if it charges entry into a building with intent to steal or commit a felony, since these are different offenses. *Champlain v. State*, 53 W (2d) 751, 193 NW (2d) 868.

While intent to steal will not be inferred from the fact of entry alone, additional circumstances such as time, nature of place entered, method of entry, identity of the accused, his conduct when arrested or interrupted, and other circumstances, without proof of actual losses, can be sufficient to permit a reasonable person to conclude the defendant entered with an intent to steal *State v. Barclay*, 54 W (2d) 651, 196 NW (2d) 745.

Evidence that defendant, at noon, walked around a private dwelling knocking on doors and then broke the glass in one and entered, and when confronted offered no excuse, is sufficient to sustain a conviction for burglary *Raymond v. State*, 55 W (2d) 482, 198 NW (2d) 351.

A burglary is completed after a door is pried open and entry made. It is no defense that the defendant changed his mind and started to leave the scene when arrested. *Morones v. State*, 61 W (2d) 544, 213 NW (2d) 31.

Action in hiding in the false ceiling of the men's room, perfected by false pretenses and fraud, rendered otherwise lawful entrance into the restaurant unlawful *Levesque v. State*, 63 W (2d) 412, 217 NW (2d) 317.

In a prosecution for burglary where a defendant is charged with unlawful entry with intent to commit the felony of criminal damage to property exceeding \$1,000, the elements of the crime are: (1) intentional entry of a building, (2) without permission, (3) with the intent at time of entry to commit criminal damage to property, (4) intending that such damage exceed \$1,000. *Gilbertson v. State*, 69 W (2d) 587, 230 NW (2d) 874.

See note to 971.26, citing *Schleiss v. State*, 71 W (2d) 733, 239 NW (2d) 68.

In burglary prosecution, ordinarily once proof of entry is made, it is defendant's burden to show consent. Where private residence is broken into in nighttime, little evidence is required to support inference of intent to steal. *LaTender v. State*, 77 W (2d) 383, 253 NW (2d) 221.

943.11 Entry into locked vehicle. Whoever intentionally enters the locked and enclosed portion or compartment of the vehicle of another without consent and with intent to steal therefrom is guilty of a Class A misdemeanor.

History: 1977 c. 173.

943.12 Possession of burglarious tools. Whoever has in personal possession any device or instrumentality intended, designed or adapted for use in breaking into any depository designed for the safekeeping of any valuables or into any building or room, with intent to use such device or instrumentality to break into a depository, building or room, and to steal therefrom, is guilty of a Class E felony.

History: 1977 c. 173.

A homemade key used to open parking meters is a burglarious tool. *Perkins v. State*, 61 W (2d) 341, 212 NW (2d) 141.

It is implausible that the defendant would be looking for the home of an acquaintance in order to pick up some artwork while carrying a crowbar, a pair of gloves and a pair of socks. *Hansen v. State*, 64 W (2d) 541, 219 NW (2d) 246.

943.125 Entry into locked coin box. (1) Whoever intentionally enters a locked coin box of another without consent and with intent to steal therefrom is guilty of a Class A misdemeanor.

(2) Whoever has in personal possession any device or instrumentality intended, designed or

adapted for use in breaking into any coin box, with intent to use the device or instrumentality to break into a coin box and to steal therefrom, is guilty of a Class A misdemeanor.

(3) In this section, "coin box" means any device or receptacle designed to receive money or any other thing of value. The term includes a depository box, parking meter, vending machine, pay telephone, money changing machine, coin-operated phonograph and amusement machine if they are designed to receive money or other thing of value.

History: 1977 c. 173.

943.13 Criminal trespass to land. (1)

Whoever does any of the following is guilty of a Class C misdemeanor:

(a) Enters any enclosed or cultivated land of another with intent to catch or kill any birds, animals, or fish on the land or gather any products of the soil without the express or implied consent of the owner or occupant to engage in any of those activities.

(b) Enters or remains on any land of another after having been notified by the owner or occupant not to enter or remain on the premises.

(c) Hunts, shoots, fishes or gathers any product of the soil on the premises of another, or enters said premises with intent to do any of the foregoing after having been notified by the owner or occupant not to do so.

(d) Enters any enclosed or cultivated land of another with a vehicle of any kind without the express or implied consent of the owner or occupant.

(2) A person has received notice from the owner or occupant within the meaning of this section if he has been notified personally, either orally or in writing, or if the land is posted. For land to be posted, a sign at least 11 inches square must be placed in at least 2 conspicuous places for every 40 acres to be protected. The sign must carry an appropriate notice and the name of the person giving the notice followed by the word "owner" if the person giving the notice is the holder of legal title to the land and by the word "occupant" if the person giving the notice is not the holder of legal title but is a lawful occupant of the land. Proof that appropriate signs as herein provided were erected or in existence upon the premises to be protected within 6 months prior to the event complained of shall be prima facie proof that the premises to be protected were posted as herein provided.

(3) Whoever erects on the land of another signs which are the same as or similar to those described in sub. (2) without obtaining the express consent of the lawful occupant of or holder of legal title to such land is subject to a Class C forfeiture.

(4) Nothing in this section shall prohibit a representative of a labor union from conferring with any employe provided such conference is conducted in the living quarters of the employe and with the consent of the employe occupants.

(5) Any authorized occupant of employer-provided housing shall have the right to decide who may enter, confer and visit with him in the housing area he occupies.

History: 1971 c. 317; 1977 c. 173, 295.

NR 10.07 (8), Wis. Adm. Code, requiring hunters to make reasonable efforts to retrieve game birds killed or injured, does not exempt a person from criminal prosecution under (1) (b) for trespassing upon posted lands to retrieve birds shot from outside the posted area. 64 Atty. Gen. 204.

943.14 Criminal trespass to dwellings.

Whoever intentionally enters the dwelling of another without the consent of some person lawfully upon the premises, under circumstances tending to create or provoke a breach of the peace, is guilty of a Class A misdemeanor.

History: 1977 c. 173.

Criminal trespass to a dwelling is not a lesser included offense of the crime of burglary. *Raymond v. State*, 55 W (2d) 482, 198 NW (2d) 351.

Entering an outbuilding accessory to a main house may be a violation. 62 Atty. Gen. 16.

MISAPPROPRIATION.

943.20 Theft. (1) ACTS. Whoever does any of the following may be penalized as provided in sub. (3):

(a) Intentionally takes and carries away, uses, transfers, conceals, or retains possession of movable property of another without his consent and with intent to deprive the owner permanently of possession of such property.

(b) By virtue of his office, business or employment, or as trustee or bailee, having possession or custody of money or of a negotiable security, instrument, paper or other negotiable writing of another, intentionally uses, transfers, conceals, or retains possession of such money, security, instrument, paper or writing without the owner's consent, contrary to his authority, and with intent to convert to his own use or to the use of any other person except the owner. A refusal to deliver any money or a negotiable security, instrument, paper or other negotiable writing, which is in his possession or custody by virtue of his office, business or employment, or as trustee or bailee, upon demand of the person entitled to receive it, or as required by law, is prima facie evidence of an intent to convert to his own use within the meaning of this paragraph.

(c) Having a legal interest in movable property, intentionally and without consent, takes such property out of the possession of a pledgee or other person having a superior right of possession, with intent thereby to deprive the pledgee

or other person permanently of the possession of such property.

(d) Obtains title to property of another by intentionally deceiving him with a false representation which is known to be false, made with intent to defraud, and which does defraud the person to whom it is made. "False representation" includes a promise made with intent not to perform it if it is a part of a false and fraudulent scheme.

(e) Intentionally fails to return any personal property which is in his possession or under his control by virtue of a written lease or written rental agreement, within 10 days after the lease or rental agreement has expired.

(2) DEFINITIONS. In this section:

(a) "Property" means all forms of tangible property, whether real or personal, without limitation including electricity, gas and documents which represent or embody a chose in action or other intangible rights.

(b) "Movable property" is property whose physical location can be changed, without limitation including electricity and gas, documents which represent or embody intangible rights, and things growing on, affixed to or found in land.

(c) "Value" means the market value at the time of the theft or the cost to the victim of replacing the property within a reasonable time after the theft, whichever is less, but if the property stolen is a document evidencing a chose in action or other intangible right, value means either the market value of the chose in action or other right or the intrinsic value of the document, whichever is greater. If the thief gave consideration for, or had a legal interest in, the stolen property, the amount of such consideration or value of such interest shall be deducted from the total value of the property.

(d) "Property of another" includes property in which the actor is a co-owner and property of a partnership of which the actor is a member, unless the actor and the victim are husband and wife.

(3) PENALTIES. Whoever violates this section:

(a) If the value of the property does not exceed \$500, is guilty of a Class A misdemeanor.

(b) If the value of the property exceeds \$500 but not \$2,500, is guilty of a Class E felony.

(c) If the value of the property exceeds \$2,500, is guilty of a Class C felony.

(d) If the value of the property does not exceed \$2,500 and any of the following circumstances exist, is guilty of a Class D felony:

1. The property is a domestic animal; or
2. The property is taken from the person of another or from a corpse; or

3. The property is taken from a building which has been destroyed or left unoccupied because of physical disaster, riot, bombing or the proximity of battle; or

4. The property is taken after physical disaster, riot, bombing or the proximity of battle has necessitated its removal from a building; or

5. The property is a firearm.

History: 1977 c. 173, 255, 447.

Cross Reference: Misapplication of funds by contractor or subcontractor as theft, see 289.02 (5).

If one person takes property from the person of another and a 2nd person carries it away, the evidence may show a theft from the person under (1) (a) and (3) (d) 2, either on a theory of conspiracy or of complicity. *Hawpetoss v. State*, 52 W (2d) 71, 187 NW (2d) 823.

Theft is a lesser included offense of the crime of robbery. *Moore v. State*, 55 W (2d) 1, 197 NW (2d) 820.

Attempted theft by false representation (signing another's name to a car purchase contract) is not an included crime of forgery (signing the owner's name to a car title to be traded in). *State v. Fuller*, 57 W (2d) 408, 204 NW (2d) 452.

Under (1) (d) it is not necessary that the person who parts with property be induced to do so by a false and fraudulent scheme; he must be deceived by a false representation which is part of such a scheme. *Schneider v. State*, 60 W (2d) 765, 211 NW (2d) 511.

In abolishing action for breach of promise to marry, legislature did not sanction either civil or criminal fraud by the breaching party against property of a duped victim. Restrictions on civil actions for fraud under 248.06 are not applicable to related criminal actions. *Lambert v. State*, 73 W (2d) 590, 243 NW (2d) 524.

Sub. (1) (a) should be read in the disjunctive so as to prohibit both the taking of and the exercise of unauthorized control over, property of another. Sale of stolen property is thus prohibited. *State v. Genova*, 77 W (2d) 141, 252 NW (2d) 380.

A landlord who failed to return or account for a security deposit ordinarily could not be prosecuted under this section. 60 Atty. Gen. 1.

See note to 289.41, citing 63 Atty. Gen. 81.

943.205 Theft of trade secrets. (1) Whoever with intent to deprive or withhold from the owner thereof the control of a trade secret, or with intent to appropriate a trade secret to his own use or the use of another not the owner, and without authority of the owner, does any of the following may be penalized as provided in sub. (3):

(a) Takes, uses, transfers, conceals, exhibits or retains possession of property of the owner representing a trade secret.

(b) Makes or causes to be made a copy of property of the owner representing a trade secret.

(c) Obtains title to property representing a trade secret or a copy of such property by intentionally deceiving the owner with a false representation which is known to be false, made with intent to defraud, and which does defraud the person to whom it is made. "False representation" includes a promise made with intent not to perform if it is a part of a false and fraudulent scheme.

(2) In this section:

(a) "Trade secret" means the whole or any portion or phase of any scientific, technical,

laboratory, experimental, development or manufacturing information, equipment, tooling, machinery, design, process, procedure, formula or improvement, or any business information used or for use in the conduct of a business, which is manifestly intended by the owner not to be available to anyone other than the owner or persons having access thereto with the owner's consent and which accords or may accord the owner a competitive advantage over other persons.

(b) "Property" includes without limitation because of enumeration any object, material, device, substance, writing, record, recording, drawing, sample, specimen, prototype, model, photograph, micro-organism, blueprint or map, or any copy thereof.

(c) "Representing" means disclosing, embodying, describing, depicting, containing, constituting, reflecting or recording.

(d) "Copy" means any facsimile, replica, photograph or other reproduction of any property and any notation, drawing or sketch made of or from any property.

(f) "Owner" includes a co-owner of the person charged and a partnership of which the person charged is a member, unless the person charged and the victim are husband and wife.

(3) Any one who violates this section is guilty of a Class E felony.

(4) In a prosecution for a violation of this section it shall be no defense that the person charged returned or intended to return the property involved or that he destroyed all copies made.

(5) This section does not prevent any one from using skills and knowledge of a general nature gained while employed by the owner of a trade secret.

History: 1977 c. 173.

943.207 Transfer of recorded sounds for unlawful use; sale. (1) Whoever does any of the following may be penalized as provided in sub. (3):

(a) Knowingly and wilfully transfers or causes to be transferred, without the consent of the owner, any sounds recorded on a phonograph record, disc, wire, tape, film or other article on which sounds are recorded, with intent to sell or cause to be sold, the article onto which such sounds are transferred.

(b) Advertises, offers for sale or sells any article onto which sounds have been transferred as described in par. (a), with the knowledge that the sounds thereon have been so transferred without the consent of the owner.

(2) In this section "owner" means the person who owns the original fixation of sounds embodied in the master phonograph record, master

disc, master tape, master film or other device used for reproducing recorded sounds on phonograph records, discs, tapes, films or other articles on which sound is recorded, and from which the transferred recorded sounds are directly or indirectly derived.

(3) (a) Any person violating sub. (1) (a) is guilty of a Class B misdemeanor for the first offense, and for any subsequent offense is guilty of a Class A misdemeanor.

(b) Any person violating sub. (1) (b) is guilty of a Class B misdemeanor.

(c) Each unlawful transfer under sub. (1) (a) and each unlawful advertisement, offer or sale under sub. (1) (b) constitutes a separate offense.

(4) This section does not apply to:

(a) The transfer by a cable television operator or radio or television broadcaster of any recorded sounds, other than from the sound track of a motion picture, intended for, or in connection with, broadcast or other transmission or related uses, or for archival purposes.

(b) The transfer of any video tape or nonvideo audio tape intended for possible use in a civil or criminal action or special proceeding in a court of record.

History: 1975 c. 300; 1977 c. 173.

943.21 Fraud on hotel or restaurant keeper. (1) Whoever does either of the following may be penalized as provided in sub. (3):

(a) Having obtained any food, lodging or other service or accommodation at any hotel, motel, boarding or lodging house, or restaurant, intentionally absconds without paying for it.

(b) While a guest at any hotel, motel, boarding or lodging house, or restaurant, intentionally defrauds the keeper thereof in any transaction arising out of such relationship as guest.

(2) Under this section, prima facie evidence of an intent to defraud is shown by:

(a) The refusal of payment upon presentation when due, and the return unpaid of any bank check or order for the payment of money, given by any guest to any hotel, motel, boarding or lodging house, or restaurant, in payment of any obligation arising out of such relationship as guest. Such facts shall also be deemed prima facie evidence of an intent to abscond without payment.

(b) The failure or refusal of any guest at a hotel, motel, boarding or lodging house, or restaurant, to pay, upon written demand, the established charge for food, lodging or other service or accommodation actually rendered.

(c) The giving of false information on a lodging registration form or the presenting of false or fictitious credentials for the purpose of obtaining lodging or credit.

(d) The drawing, endorsing, issuing or delivering to any hotel, motel, boarding or lodging house, or restaurant, of any check, draft or order for payment of money upon any bank or other depository, in payment of established charges for food, lodging or other service or accommodation, knowing at the time that there is not sufficient credit with the drawee bank or other depository for payment in full of the instrument drawn.

(3) Whoever violates this section:

(a) Is guilty of a Class A misdemeanor when the value of any food, lodging, accommodation or other service is \$500 or less.

(b) Is guilty of a Class E felony when the value of any food, lodging, accommodation or other service exceeds \$500.

History: 1977 c. 173.

943.22 Use of cheating tokens. Whoever obtains the property or services of another by depositing anything which he or she knows is not lawful money or an authorized token in any receptacle used for the deposit of coins or tokens is subject to a Class C forfeiture.

History: 1977 c. 173.

943.23 Operating vehicle without owner's consent. (1) Whoever intentionally takes and drives any vehicle without the consent of the owner is guilty of a Class E felony.

(2) Whoever violates sub. (1) and abandons a vehicle without damage within 24 hours is guilty of a Class A misdemeanor.

History: 1977 c. 173.

To sustain a conviction of operating a car without the owner's consent it is not necessary that the driver be the person who actually took the car. *Edwards v. State*, 46 W (2d) 249, 174 NW (2d) 269.

943.24 Issue of worthless check. (1) Whoever issues any check or other order for the payment of money less than \$500 which, at the time of issuance, he or she intends shall not be paid is guilty of a Class A misdemeanor.

(2) Whoever issues any single check or other order for the payment of \$500 or more or whoever within a 15-day period issues more than one check or other order amounting in the aggregate to \$500 or more which, at the time of issuance, the person intends shall not be paid is guilty of a Class E felony.

(3) Any of the following is prima facie evidence that the person at the time he or she issued the check or other order for the payment of money, intended it should not be paid:

(a) Proof that, at the time of issuance, the person did not have an account with the drawee; or

(b) Proof that, at the time of issuance, the person did not have sufficient funds or credit

with the drawee and that the person failed within 5 days after receiving notice of nonpayment or dishonor to pay the check or other order; or

(c) Proof that, when presentment was made within a reasonable time, the person did not have sufficient funds or credit with the drawee and the person failed within 5 days after receiving notice of nonpayment or dishonor to pay the check or other order.

(4) This section does not apply to a postdated check or to a check given for a past consideration, except a payroll check.

History: 1977 c. 173.

"Past consideration" under (4) discussed. 66 Atty. Gen. 168.

943.25 Transfer of encumbered property.

(1) Whoever, with intent to defraud, conveys real property which he or she knows is encumbered, without informing the grantee of the existence of the encumbrance is guilty of a Class E felony.

(2) Whoever, with intent to defraud, does any of the following is guilty of a Class E felony:

(a) Conceals, removes or transfers any personal property in which he knows another has a security interest; or

(b) In violation of the security agreement, fails or refuses to pay over to the secured party the proceeds from the sale of property subject to a security interest.

(3) It is prima facie evidence of an intent to defraud within the meaning of sub. (2) (a) if a person, with knowledge that the security interest exists, removes or sells the property without either the consent of the secured party or authorization by the security agreement and fails within 72 hours after service of written demand for the return of the property either to return it or, in the event that return is not possible, to make full disclosure to the secured party of all the information he has concerning its disposition, location and possession.

(4) In this section "security interest" means an interest in property which secures payment or other performance of an obligation; "security agreement" means the agreement creating the security interest; "secured party" means the person designated in the security agreement as the person in whose favor there is a security interest or, in the case of an assignment of which the debtor has been notified, the assignee.

History: 1977 c. 173.

It is not necessary that a security interest be perfected by filing to support a conviction under this section. State v. Tew, 54 W (2d) 361, 195 NW (2d) 615.

"Removal" under (2) (a) refers to a permanent change in situs, not necessarily across state lines. Statute does not require a showing of diligence by secured party in seeking secured property. Jameson v. State, 74 W (2d) 176, 246 NW (2d) 501.

943.26 Removing or damaging encumbered real property. (1) Any mortgagor of real property or vendee under a land contract who, without the consent of the mortgagee or vendor, intentionally removes or damages the real property so as to substantially impair the mortgagee's or vendor's security is guilty of a Class A misdemeanor.

(2) If the security is impaired by more than \$1,000, the mortgagor or vendee is guilty of a Class E felony.

History: 1977 c. 173.

943.27 Possession of records of certain usurious loans.

Except as otherwise authorized by law, any person who knowingly possesses any writing representing or constituting a record of a charge of, contract for, receipt of or demand for a rate of interest or consideration exceeding \$20 upon \$100 for one year computed upon the declining principal balance of the loan, use or forbearance of money, goods or things in action or upon the loan, use or sale of credit is guilty of a Class E felony.

History: 1977 c. 173.

943.28 Loan sharking prohibited.

(1) For the purposes of this section:

(a) To collect an extension of credit means to induce in any way any person to make repayment thereof.

(b) An extortionate extension of credit is any extension of credit with respect to which it is the understanding of the creditor and the debtor at the time it is made that delay in making repayment or failure to make repayment could result in the use of violence or other criminal means to cause harm to the person, reputation or property of any person.

(c) An extortionate means is any means which involves the use, or an express or implicit threat of use, of violence or other criminal means to cause harm to the person, reputation or property of any person.

(2) Whoever makes any extortionate extension of credit, or conspires to do so, if one or more of the parties to the conspiracy does an act to effect its object, is guilty of a Class C felony.

(3) Whoever advances money or property, whether as a gift, as a loan, as an investment, pursuant to a partnership or profit-sharing agreement, or otherwise, for the purpose of making extortionate extensions of credit, is guilty of a Class C felony.

(4) Whoever knowingly participates in any way in the use of any extortionate means a) to collect or attempt to collect any extension of credit, or b) to punish any person for the

nonrepayment thereof, is guilty of a Class C felony.

History: 1977 c. 173.

943.30 Threats to injure or accuse of crime. (1) Whoever, either verbally or by any written or printed communication, maliciously threatens to accuse or accuses another of any crime or offense, or threatens or commits any injury to the person, property, business, profession, calling or trade, or the profits and income of any business, profession, calling or trade of another, with intent thereby to extort money or any pecuniary advantage whatever, or with intent to compel the person so threatened to do any act against the person's will or omit to do any lawful act, is guilty of a Class D felony.

(2) Whoever violates sub. (1) by obstructing, delaying or affecting commerce or business or the movement of any article or commodity in commerce or business is guilty of a Class D felony.

(3) (a) Whoever violates sub. (1) by attempting to influence any witness in any matter, cause, action or proceeding before any court, officer or body mentioned in s. 946.31 (1), whether de facto or de jure, or any petit or grand juror, in the performance of his or her functions as such, or to deter any such witness from testifying, is guilty of a Class D felony.

(b) In this subsection "witness" means any person who has been or is expected to be summoned to testify, or who by reason of having relevant information is subject to call or likely to be called as a witness, whether or not any action or proceeding has as yet been commenced.

(4) Whoever violates sub. (1) by attempting to influence the official action of any public officer is guilty of a Class D felony.

History: 1977 c. 173.

943.31 Threats to communicate derogatory information. Whoever threatens to communicate to anyone information, whether true or false, which would injure the reputation of the threatened person or another unless the threatened person transfers property to a person known not to be entitled to it is guilty of a Class E felony.

History: 1977 c. 173.

943.32 Robbery. (1) Whoever, with intent to steal, takes property from the person or presence of the owner by either of the following means is guilty of a Class C felony:

(a) By using force against the person of the owner with intent thereby to overcome his physical resistance or physical power of resistance to the taking or carrying away of the property; or

(b) By threatening the imminent use of force against the person of the owner or of another who is present with intent thereby to compel the owner to acquiesce in the taking or carrying away of the property.

(2) Whoever violates sub. (1) while armed with a dangerous weapon is guilty of a Class B felony.

(3) In this section "owner" means a person in possession of property whether his possession is lawful or unlawful.

History: 1977 c. 173.

Conviction of attempted armed robbery was supported by corroborated testimony of the victim who, returning from a bank with a sack full of money and about to enter his tavern, was confronted by defendant, the latter demanding the sack while trying to draw a gun which became stuck in his pocket, whereupon the proprietor ran into the tavern, it being manifest that there were unequivocal acts accompanied by the requisite intent to constitute the crime. The state was not obliged, as defendant contended, to prove that the gun used was in fact a lethal weapon. *Boyles v. State*, 46 W (2d) 473, 175 NW (2d) 277.

While a person who seeks to repossess himself of specific property which he owns, and to which he has the present right of possession, and the means he uses involves a gun or force, might not have the intention to steal, the taking of money from a debtor by force to pay a debt is robbery unless the accused can trace his ownership to specific coins and bills in the possession of the debtor. *Edwards v. State*, 49 W (2d) 105, 181 NW (2d) 383.

See note to 943.10, citing *State v. DiMaggio*, 49 W (2d) 565, 182 NW (2d) 466.

It is error not to instruct on the allegations that the defendant was armed and that he attempted to conceal his identity, but this is harmless error where the facts are uncontroverted. *Claybrooks v. State*, 50 W (2d) 79, 183 NW (2d) 139.

On a charge of armed robbery the court should instruct as to the definition of a dangerous weapon, but the error is harmless where all the evidence is to the effect that the defendant had a gun. *Claybrooks v. State*, 50 W (2d) 87, 183 NW (2d) 143.

Where the evidence is clear that the defendant was armed, the court need not submit a verdict which would allow the jury to find him guilty of unarmed robbery. *Kimmons v. State*, 51 W (2d) 266, 186 NW (2d) 308.

An information charging armed robbery is void if its fails to allege the use or threat of force to overcome the owner's resistance. *Champlain v. State*, 53 W (2d) 751, 193 NW (2d) 868.

Theft is a lesser included offense of the crime of robbery. Both require asportation. *Moore v. State*, 55 W (2d) 1, 197 NW (2d) 820.

It is undisputed that the pouch was taken from her by force and in such a manner as to overcome any physical resistance or power of resistance by the victim. These facts do not constitute a theft under 943.20. *Walton v. State*, 64 W (2d) 36, 218 NW (2d) 309.

Where the victim testified that defendant's accomplice held an object to his throat while defendant took money from his person and where the defendant testified that no robbery whatsoever occurred, the jury was presented with no evidence indicating that a robbery absent the threat of force had occurred, and there was no error in denial of defendant's request for an instruction on theft from a person. *State v. Powers*, 66 W (2d) 84, 224 NW (2d) 206.

Testimony of robbery victim that defendant displayed what appeared to be the butt of a gun protruding from defendant's waistband and hinted that the object was a gun was insufficient evidence to prove armed robbery. *Dickenson v. State*, 75 W (2d) 47, 248 NW (2d) 447.

943.34 Receiving stolen property. Whoever intentionally receives or conceals stolen property is guilty of:

(1) A Class A misdemeanor, if the value of the property does not exceed \$500 but if the

property is received from a person under the age of 18 years, the person is guilty of a Class E felony.

(2) A Class E felony, if the value of the property exceeds \$500 but not more than \$2,500.

(3) A Class C felony, if the value of the property exceeds \$2,500.

History: 1977 c. 173.

Fact that sequentially received stolen property was purchased for lump sum is insufficient basis to aggregate value of property; crime of receiving stolen property does not require payment. *State v. Spraggin*, 71 W (2d) 604, 239 NW (2d) 297.

943.35 Receiving property from children.

Whoever does either of the following is guilty of a Class A misdemeanor:

(1) As a dealer in secondhand articles or junk, purchases any personal property, except old rags and waste paper, from any minor, without the written consent of his parent or guardian; or

(2) As a pawnbroker or other person who loans money and takes personal property as security therefor, receives personal property as security for a loan from any minor without the written consent of his parent or guardian.

History: 1971 c. 228; 1977 c. 173.

943.37 Alteration of property identification marks. Whoever does any of the following with intent to prevent the identification of the property involved is guilty of a Class A misdemeanor:

(1) Alters or removes any identification mark on any log or other lumber without the consent of the owner; or

(2) Alters or removes any identification mark from any receptacle used by the manufacturer of any beverage; or

(3) Alters or removes any manufacturer's identification number on personal property or possesses any personal property with knowledge that the manufacturer's identification number has been removed or altered. Possession of 2 or more similar items of personal property with the manufacturer's identification number altered or removed is prima facie evidence of knowledge of the alteration or removal and of an intent to prevent identification of the property.

(4) Alters or removes livestock brands, recorded under s. 95.11, from any animal without the owner's consent, or possesses any livestock with knowledge that the brand has been altered or removed without the owner's knowledge or consent.

History: 1973 c. 239; 1977 c. 173.

943.38 Forgery. (1) Whoever with intent to defraud falsely makes or alters a writing or

object of any of the following kinds so that it purports to have been made by another, or at another time, or with different provisions, or by authority of one who did not give such authority, is guilty of a Class C felony:

(a) A writing or object whereby legal rights or obligations are created, terminated or transferred, or any writing commonly relied upon in business or commercial transactions as evidence of debt or property rights; or

(b) A public record or a certified or authenticated copy thereof; or

(c) An official authentication or certification of a copy of a public record; or

(d) An official return or certificate entitled to be received as evidence of its contents.

(2) Whoever utters as genuine or possesses with intent to utter as false or as genuine any forged writing or object mentioned in sub. (1), knowing it to have been thus falsely made or altered, is guilty of a Class C felony.

(3) Whoever, with intent to defraud, does any of the following is guilty of a Class A misdemeanor:

(a) Falsely makes or alters any object so that it appears to have value because of antiquity, rarity, source or authorship which it does not possess; or possesses any such object knowing it to have been thus falsely made or altered and with intent to transfer it as original and genuine, by sale or for security purposes; or

(b) Falsely makes or alters any writing of a kind commonly relied upon for the purpose of identification or recommendation; or

(c) Without consent, places upon any merchandise an identifying label or stamp which is or purports to be that of another craftsman, tradesman, packer or manufacturer; or

(d) Falsely makes or alters a membership card purporting to be that of a fraternal, business or professional association or of a labor union; or possesses any such card knowing it to have been thus falsely made or altered and with intent to use it or cause or permit its use to deceive another; or

(e) Falsely makes or alters any writing purporting to evidence a right to transportation on any common carrier; or

(f) Falsely makes or alters a certified abstract of title to real estate.

History: 1977 c. 173.

A defendant convicted of forgery (uttering) under sub. (2), may be sentenced to: (1) A prison term not to exceed 10 years; (2) a fine of not more than \$5,000; (3) both a prison term and a fine; (4) probation in lieu of all punishment; (5) probation coupled with a fine; or (6) probation with conditions, which may include restitution; but no statute allows a trial court to impose restitution or any other condition when the statutory penalty rather than probation is selected. *Spannuth v. State*, 70 W (2d) 362, 234 NW (2d) 79.

Ratification, waiver and estoppel regarding forged signatures discussed. In *Matter of Estate of Alexander*, 75 W (2d) 168, 248 NW (2d) 475.

943.39 Fraudulent writings. Whoever, with intent to injure or defraud, does any of the following is guilty of a Class D felony:

(1) Being a director, officer, agent or employe of any corporation falsifies any record, account or other document belonging to that corporation by alteration, false entry or omission, or makes, circulates or publishes any written statement regarding the corporation which he knows is false; or

(2) By means of deceit obtains a signature to a writing which is the subject of forgery under s. 943.38 (1); or

(3) Makes a false written statement with knowledge that it is false and with intent that it shall ultimately appear to have been signed under oath.

History: 1977 c. 173.

943.395 Fraudulent insurance and employe benefit program claims. Whoever, knowing it to be false or fraudulent, does any of the following is guilty of a Class A misdemeanor:

(1) Presents or causes to be presented a false or fraudulent claim, or any proof in support of such claim, to be paid under any contract or certificate of insurance; or

(2) Prepares, makes or subscribes to a false or fraudulent account, certificate, affidavit, proof of loss or other document or writing, with knowledge that the same may be presented or used in support of a claim for payment under a policy of insurance.

(3) Presents or causes to be presented a false or fraudulent claim or benefit application, or any false or fraudulent proof in support of such a claim or benefit application, to be paid under any employe benefit program created by ch. 40, 41 or 42.

(4) Makes any misrepresentation in or with reference to any application for membership or documentary or other proof for the purpose of obtaining membership in or noninsurance benefit from any fraternal subject to Title XLI, for himself or herself or any other person.

History: 1971 c. 214; 1975 c. 373, 421; 1977 c. 173.

943.40 Fraudulent destruction of certain writings. Whoever with intent to defraud does either of the following is guilty of a Class D felony:

(1) Destroys or mutilates any corporate books of account or records; or

(2) Completely erases, obliterates or destroys any writing which is the subject of forgery under s. 943.38 (1) (a).

History: 1977 c. 173.

943.41 Credit card crimes. (1) DEFINITIONS. In this section:

(a) "Alter a credit card or purported credit card" means change in any respect by addition, deletion or electromagnetic manipulation any material on or in any instrument or device, whether known as a credit card, cash card, credit plate, charge plate or by any other name, except to insert the signature of the person to whom the card is issued.

(b) "Cardholder" means the person or organization named on the face of the credit card to whom or for whose benefit the credit card is issued by an issuer.

(c) "Counterfeit" means to manufacture, produce or create by any means a credit card or purported credit card without the issuer's consent or authorization.

(d) "Credit card" means any instrument or device, whether known as a credit card, cash card, credit plate, or by any other name, issued with or without fee by an issuer for the use of the cardholder in obtaining money, goods, services or anything else of value on credit or from an account.

(e) "Expired credit card" means a credit card which is no longer valid because the term shown thereon has elapsed.

(f) "Issuer" means the business organization or financial institution which issues a credit card or its duly authorized agent.

(g) "Receives" or "receiving" means acquiring possession or control or accepting as security for a loan.

(h) "Revoked credit card" means a credit card which is no longer valid because permission to use it has been suspended or terminated by the issuer.

(2) FALSE STATEMENTS. No person shall make or cause to be made, whether directly or indirectly, any false statements in writing, knowing it to be false and with intent that it be relied upon, respecting his identity or that of any other person or his financial condition or that of any other person or other entity for the purpose of procuring the issuance of a credit card.

(3) THEFT BY TAKING CARD. (a) No person shall acquire a credit card from the person, possession, custody or control of another without the cardholder's consent or, with knowledge that it has been so acquired, receive the credit card with intent to use it or sell it or to transfer it to a person other than the issuer. Acquiring a credit card without consent includes obtaining it by conduct defined as statutory theft. If a person has in his possession or under his control credit cards issued in the names of 2 or more other persons it is prima facie evidence that he acquired them in violation of this subsection.

(b) No person shall receive a credit card that he knows to have been lost, mislaid, or delivered under a mistake as to the identity or address of the cardholder, and retain possession thereof with intent to sell it, or to transfer it to a person other than the issuer or the cardholder, or to use it. The possession of such a credit card for more than 7 days by a person other than the issuer or the cardholder is prima facie evidence that such person intended to sell, transfer or use it in violation of this subsection.

(c) No person other than the issuer shall sell a credit card. No person shall buy a credit card from a person other than the issuer.

(d) No person shall, with intent to defraud the issuer, a person or organization providing money, goods, services or anything else of value, or any other person, obtain control over a credit card as security for debt.

(e) No person, other than the issuer, shall during any 12-month period receive credit cards issued in the names of 3 or more persons which he has reason to know were taken or retained under circumstances prohibited by this subsection or sub. (2).

(4) FORGERY OF CREDIT CARD. (a) No person shall, with intent to defraud a purported issuer, a person or organization providing money, goods, services or anything else of value or any other person, alter or counterfeit a credit card or purported credit card or possess a credit card or purported credit card with knowledge that it has been altered or counterfeited. The possession by a person other than the purported issuer of 2 or more credit cards which have been altered or counterfeited is prima facie evidence that the person intended to defraud or that he knew the credit cards to have been so altered or counterfeited.

(b) No person other than the cardholder or a person authorized by him shall, with intent to defraud the issuer, a person or organization providing money, goods, services or anything else of value or any other person, sign a credit card. Possession by a person other than the intended cardholder or one authorized by the intended cardholder of a credit card signed by such person is prima facie evidence that such person intended to defraud in violation of this subsection.

(5) FRAUDULENT USE. (a) No person shall, with intent to defraud the issuer, a person or organization providing money, goods, services or anything else of value or any other person, 1) use for the purpose of obtaining money, goods, services or anything else of value, a credit card obtained or retained in violation of sub. (3) or a credit card which he knows is forged, expired or revoked, or 2) obtain money, goods, services or anything else of value by representing without

the consent of the cardholder that he is the holder of a specified card or by representing that he is the holder of a card and such card has not in fact been issued. Knowledge of revocation shall be presumed to have been received by a cardholder 4 days after it has been mailed to him at the address set forth on the credit card or at his last-known address by registered or certified mail, return receipt requested, and if the address is more than 500 miles from the place of mailing, by air mail. If the address is located outside the United States, Puerto Rico, the Virgin Islands, the Canal Zone and Canada, notice shall be presumed to have been received 10 days after mailing by registered or certified mail.

(b) No cardholder shall use a credit card issued to him or allow another person to use a credit card issued to him with intent to defraud the issuer, a person or organization providing money, goods, services or anything else of value or any other person.

(6) FRAUDULENT USE; OTHER PERSONS. (a) No person who is authorized by an issuer to furnish money, goods, services or anything else of value upon presentation of a credit card by the cardholder, or any agent or employe of such person, shall, with intent to defraud the issuer or the cardholder, furnish money, goods, services or anything else of value upon presentation of a credit card obtained or retained under circumstances prohibited by sub. (3) or a credit card which he knows is forged, expired or revoked.

(b) No person who is authorized by an issuer to furnish money, goods, services or anything else of value upon presentation of a credit card by the cardholder, or any agent or employe of such person, shall, with intent to defraud, fail to furnish money, goods, services or anything else of value which he represents in writing to the issuer that he has furnished.

(c) No person other than the cardholder shall possess an incomplete credit card with intent to complete it without the consent of the issuer. A credit card is "incomplete" if part of the matter, other than the signature of the cardholder, which an issuer requires to appear on the credit card before it can be used by a cardholder has not yet been stamped, embossed, imprinted or written on it.

(d) No person shall receive money, goods, services or anything else of value obtained under circumstances prohibited by this section, knowing or believing that it was so obtained. Any person who obtains at a discount price a ticket issued by an airline, railroad, steamship or other transportation company which was acquired under circumstances prohibited by this section without reasonable inquiry to ascertain that the person from whom it was obtained had a legal right to possess it shall be presumed to know that

such ticket was acquired under circumstances prohibited by this section.

(7) DEFENSES NOT AVAILABLE. In any prosecution for violation of this section, it is not a defense:

(a) That a person other than the defendant has not been convicted, apprehended or identified; or

(b) That some of the acts constituting the crime did not occur in this state or were not a crime or elements of a crime where they did occur.

(8) PENALTIES. (a) Any person violating any provision of sub. (2), (3) (a) to (d) or (4) (b) is guilty of a Class A misdemeanor.

(b) Any person violating any provision of sub. (3) (e), (4) (a) or (6) (c) is guilty of a Class E felony.

(c) Any person violating any provision of sub. (5) or (6) (a), (b) or (d), if the value of the money, goods, services or property illegally obtained does not exceed \$500 is guilty of a Class A misdemeanor; if the value of the money, goods, services or property exceeds \$500 but does not exceed \$2,500, in a single transaction or in separate transactions within a period not exceeding 6 months, the person is guilty of a Class E felony; or if the value of the money, goods, services or property exceeds \$2,500, the person is guilty of a Class C felony.

History: 1973 c. 219; 1977 c. 173.

943.45 Obtaining telecommunications service by fraud. (1) Whoever with intent to defraud obtains or attempts to obtain telecommunications service by any of the following means may be penalized as provided in sub. (3):

(a) Charging such service to an existing telephone number or credit card number without the consent of the subscriber thereto or the legitimate holder thereof.

(b) Charging such service to a false, fictitious, suspended, terminated, expired, canceled or revoked telephone number or credit card number.

(c) Rearranging, tampering with or making connection with any facilities or equipment.

(d) Using a code, prearranged scheme, or other stratagem or device whereby said person in effect sends or receives information.

(e) Using any other contrivance, device or means to avoid payment of the lawful charges, in whole or in part, for such service.

(2) This section shall apply when the said telecommunications service either originates or terminates, or both, in this state, or when the charges for said telecommunications service would have been billable, in normal course, by a person providing telecommunications service in this state, but for the fact that said service was

obtained, or attempted to be obtained, by one or more of the means set forth in sub. (1).

(3) Whoever violates this section is guilty of:

(a) A Class A misdemeanor, if the charges for the service obtained, or attempted to be obtained, do not exceed \$500.

(b) A Class E felony, if the charges for the service obtained, or attempted to be obtained, exceed \$500.

(4) When there has been more than one unlawful obtaining, or attempt to obtain, by an offender, the aggregate of the charges for the telecommunications service unlawfully obtained, or attempted to be obtained, shall determine the grade of the offense.

History: 1977 c. 173.

943.50 Shoplifting. (1) Whoever intentionally alters indicia of price or value of merchandise or who takes and carries away, transfers, conceals or retains possession of merchandise held for resale by a merchant without his consent and with intent to deprive the merchant permanently of possession, or the full purchase price, of such merchandise may be penalized as provided in sub. (4).

(2) The intentional concealment of unpurchased merchandise which continues from one floor to another or beyond the last station for receiving payments in a merchant's store is evidence of intent to deprive the merchant permanently of possession of such merchandise without paying the purchase price thereof. The discovery of unpurchased merchandise concealed upon the person or among the belongings of such person or concealed by a person upon the person or among the belongings of another is evidence of intentional concealment on the part of the person so concealing such goods.

(3) A merchant or merchant's adult employe who has probable cause for believing that a person has violated this section in his presence may detain such person in a reasonable manner for a reasonable length of time to deliver him to a peace officer, or to his parent or guardian in the case of a minor. The detained person must be promptly informed of the purpose for the detention and be permitted to make phone calls, but he shall not be interrogated or searched against his will before the arrival of a peace officer who may conduct a lawful interrogation of the accused person. Compliance with this subsection entitles the merchant or his employe effecting the detention to the same defense in any action as is available to a peace officer making an arrest in the line of duty.

(4) Whoever violates this section is guilty of:

(a) A Class A misdemeanor, if the value of the merchandise does not exceed \$500.

(b) A Class E felony, if the value of the merchandise exceeds \$500 but not \$2,500.

(c) A Class C felony, if the value of the merchandise exceeds \$2,500.

History: 1977 c. 173.

Shoplifting: protection for merchants in Wisconsin. 57 MLR 141.

943.55 Removal of shopping cart. Whoever intentionally removes a shopping cart or

stroller from either the shopping area or a parking area adjacent to the shopping area to another place without authorization of the owner or person in charge and with the intent to deprive the owner permanently of possession of such property shall forfeit an amount not to exceed \$50.

History: 1977 c. 99.