

TITLE XXXII.

Crimes and the Punishment Thereof,

CHAPTER 340.

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340.01 Homicide. The killing of a human being, without the authority of law, by poison, shooting, stabbing, or any other means or in any other manner is either murder, manslaughter, negligent homicide, or excusable or justifiable homicide, according to the facts and circumstances of each case.

340.02 Murder, first degree. Such killing, when perpetrated from premeditated design to effect the death of the person killed or of any human being; shall be murder in the first degree; and the person who shall be convicted of the same shall be punished by imprisonment in the state prison during the life of the person so convicted.

From the evidence that the defendant bought a revolver, which he claimed was solely for protection of funds which he intended to carry on a contemplated elopement with the victim's sister, and that he carried the gun fully loaded to a secluded meeting place for an appointment with the victim, and that the concrete block which he claimed to have picked up spontaneously after the shooting to fasten to the victim's leg did not come from the vicinity, the jury could not conclude that his plan was laid before setting out for the appointment and that all of the equipment used in the act was on hand in his car. The record in this case warranted the submission of only 3 possible verdicts, namely, murder in the first degree, manslaughter in the fourth degree and not guilty, as against a contention that murder in the second degree and all other degrees of manslaughter should also have been submitted. State v. Babich, 258 W 290, 45 NW (2d) 660.

340.03 Murder, second degree. Such killing, when perpetrated by any act imminently dangerous to others and evincing a depraved mind, regardless of human life, without any premeditated design to effect the death of the person killed or of any human being, shall be murder in the second degree.

340.04 Same. Any person who shall, by previous engagement or appointment, fight a duel within the jurisdiction of this state, and in so doing shall inflict a wound whereof the person so injured shall die shall be deemed guilty of murder in the second degree.

340.05 Accessory. Any person who shall be the second of either party in such duel as is mentioned in section 340.04 and shall be present when such wound shall be inflicted, whereof death shall ensue, shall be deemed to be an accessory before the fact of murder in the second degree.

340.06 Causing death by injury to railroad. Any person who shall wilfully and maliciously place any obstruction upon the track of any railroad in this state, or take up or displace a rail, switch or signal, or remove a spike or otherwise injure, break down or destroy any bridge, roadbed or other structure of any such railroad, whereby the death of any person shall be caused, shall be punished by imprisonment in the state prison during life.

340.07 Murder, second degree. Any person who shall wilfully and maliciously burn, in the nighttime, the dwelling house of another or of which he is a lessee or a tenant, whereby the life of any person shall be destroyed, or shall in the nighttime wilfully and maliciously set fire to any other building, owned by himself or another, by the burning whereof such dwelling house shall be burnt in the nighttime, whereby the life of any person shall be destroyed, shall be deemed guilty of murder in the second degree.

340.08 Penalty. Any person guilty of murder in the second degree or as an accessory thereto before the fact shall be punished by imprisonment in the state prison not more than twenty-five years nor less than fourteen years.

340.09 Murder, third degree. The killing of a human being without any design to effect death by a person engaged in the commission of any felony shall be murder in the third degree and shall be punished by imprisonment in the state prison not more than fourteen years nor less than seven.

340.095 Same. Any person who shall administer to any woman pregnant with a child any medicine, drug or substance whatever, or shall use or employ any instrument or other means with intent thereby to destroy such child, unless the same shall have been necessary to preserve the life of such mother or shall have been advised by 2 physicians to be necessary for such purpose, shall, in case the death of such child or of such mother be thereby produced, be deemed guilty of murder in the third degree. In case the death of the mother is thereby produced it is unnecessary to prove that the fetus was alive when the act so causing her death was committed.

340.10 Manslaughter, first degree. The killing of a human being, without a design to effect death, by the act, procurement or culpable negligence of any other, while such other is engaged in the perpetration of any crime or misdemeanor not amounting to a felony, or in an attempt to perpetrate any such crime or misdemeanor, in cases where such killing would be murder at the common law, shall be deemed manslaughter in the first degree.

340.11 Same. The wilful killing of an unborn child, by an injury to the mother of such child, which would be murder if it resulted in the death of such mother, shall be deemed manslaughter in the first degree.

340.12 Same. Any person who shall deliberately assist another in the commission of self-murder shall be deemed guilty of manslaughter in the first degree.

340.13 Penalty. Any person who shall be guilty of manslaughter in the first degree shall be punished by imprisonment in the state prison not more than ten years nor less than five years.

340.14 Manslaughter, second degree. The killing of a human being, without design to effect death, in a heat of passion, but in a cruel and unusual manner, unless it be committed under such circumstances as to constitute excusable or justifiable homicide, shall be deemed manslaughter in the second degree.

340.15 Same. Any person who shall unnecessarily kill another either while resisting an attempt by such other person to commit any felony or to do any other unlawful act, or after such attempt shall have failed, shall be deemed guilty of manslaughter in the second degree.

[340.16 Stats. 1945 renumbered section 340.095 by 1947 c. 447]

340.17 Penalty. Any person guilty of manslaughter in the second degree shall be punished by imprisonment in the state prison not more than seven years nor less than four years.

340.18 Manslaughter, third degree. Any person who shall kill another in the heat of passion without a design to effect death, by a dangerous weapon, in any case except such wherein the killing of another is herein declared to be justifiable or excusable, shall be deemed guilty of manslaughter in the third degree.

340.19 Same. The involuntary killing of a human being by the act, procurement or culpable negligence of another, while such other person is engaged in the commission of a trespass or other injury to private rights or property or engaged in an attempt to commit such injury, shall be deemed manslaughter in the third degree.

340.20 Same. Any person being the owner of a mischievous animal, knowing its propensities, who shall wilfully suffer it to go at large or shall keep it without ordinary care, and such animal, while so at large or not confined, shall kill any human being who shall have taken all the precautions which the circumstances may permit to avoid such animal, such owner shall be deemed guilty of manslaughter in the third degree.

340.21 Same. Any person navigating any boat or vessel for gain, who shall wilfully or negligently receive so many passengers or such quantity of other lading that by means thereof such boat or vessel shall sink or overset, and thereby any human being shall be drowned or otherwise killed, shall be deemed guilty of manslaughter in the third degree.

340.22 Same. Any person having charge of any steamboat or railroad train for the conveyance of passengers, or any engineer or other person having charge of the boiler of such steamboat or locomotive of such railroad train or of any other apparatus for the generation of steam who shall, from ignorance or gross neglect, or for the purpose of excelling any other steamboat or railroad train in speed, cause a collision or wreck of such steamboat or railroad train, or create or allow to be created such an undue quantity of steam as to burst or break the boiler or other apparatus in which it shall be generated, or any apparatus or machinery connected therewith by which collision, wreck or bursting or breaking of such boiler any person shall be killed, shall be deemed guilty of manslaughter in the third degree.

340.23 Same. Any physician, while in a state of intoxication, who shall, without any design to effect death, administer any poison, drug or medicine or do any other act to another person which shall produce the death of such other person shall be deemed guilty of manslaughter in the third degree.

340.24 Penalty. Any person who shall be guilty of manslaughter in the third degree shall be punished by imprisonment in the state prison not more than four years nor less than two years.

340.25 Manslaughter, fourth degree. The involuntary killing of another by any weapon or by any means, neither cruel nor unusual, in the heat of passion, in any cases other than such as are herein declared to be justifiable or excusable homicides, shall be deemed manslaughter in the fourth degree.

340.26 Same. Every other killing of a human being by the act, procurement or gross negligence of another, except negligent homicide, where such killing is not justifiable or excusable, or is not declared in this chapter murder or manslaughter of some other degree, shall be deemed manslaughter in the fourth degree.

340.27 Penalty. Any person who shall be guilty of manslaughter in the fourth degree shall be punished by imprisonment in the state prison not more than two years nor less than one year, or by imprisonment in the county jail not more than one year, or by fine not exceeding one thousand dollars, or by both such fine and imprisonment.

340.271 Negligent homicide. (1) Any person who by operation of any vehicle while under the influence of alcoholic beverages or narcotic drugs shall cause the death of another shall be deemed guilty of negligent homicide and upon conviction thereof shall be punished by imprisonment in the state prison not more than 5 years nor less than one year, or by imprisonment in the county jail not more than one year, or by fine of not more than \$2,500, or by both such fine and imprisonment. This subsection shall not limit the right of criminal action against any person who by the operation of any vehicle while under the influence of alcoholic beverages or narcotic drugs shall cause the death of another, to proceedings under this section, but such person may be proceeded against under any appropriate homicide statute.

(2) Any person who, by the operation of any vehicle at an excessive rate of speed or in a careless, reckless or negligent manner constituting or amounting to a high degree of negligence, but not wilfully or wantonly, shall cause the death of another, shall be

deemed guilty of negligent homicide and upon conviction thereof shall be punished by imprisonment in the county jail not more than one year or by a fine of not more than \$1,000, or by both such fine and imprisonment.

(3) Any person who, by the operation or handling of a gun, pistol or other firearm or of a bow and arrow in a careless, reckless or negligent manner constituting or amounting to a high degree of negligence, but not wilfully or wantonly, shall cause the death of another, shall be deemed guilty of negligent homicide and shall be punished as provided in subsection (2).

340.28 Homicide and manslaughter defined. The killing of a human being by the act, procurement or omission of another in cases where such killing shall not be murder according to the provisions of this chapter is either justifiable or excusable homicide or manslaughter.

340.29 Homicide, when justified. Such homicide is justifiable when committed by public officers and those acting by their command in their aid and assistance, either in obedience to any judgment of a competent court or where necessarily committed in overcoming actual resistance to the execution of some legal process, or to the discharge of any other legal duty, or when necessarily committed in retaking felons who have been rescued, or who have escaped, or when necessarily committed in arresting felons fleeing from justice, or when committed by any person in either of the following cases:

(1) When resisting any attempt to murder such person, or to commit any felony upon him or upon or in any dwelling house in which such person may be; or

(2) When committed in the lawful defense of such person or of his or her husband, wife, parent, child, master, mistress, or servant, guardian or ward, when there shall be reasonable ground to apprehend a design to commit a felony or to do some great personal injury, and there shall be reasonable cause for believing that there is imminent danger of such design being accomplished; or

(3) When necessarily committed in attempting by lawful ways and means to apprehend any person for any felony committed, or in lawfully suppressing any riot or in lawfully keeping and preserving the peace.

340.30 Excusable homicide. Such homicide is excusable when committed by accident and misfortune in lawfully correcting a child or servant, or in doing any other lawful act by lawful means with usual and ordinary caution and without any unlawful intent; or by accident and misfortune in the heat of passion upon any sudden and sufficient provocation; or upon a sudden combat, without any undue advantage being taken and without any dangerous weapon being used, and not done in a cruel or unusual manner.

340.31 Verdict. Whenever it shall appear to the jury on the trial of any person indicted or informed against for murder or manslaughter that the alleged homicide was committed under circumstances or in cases where by law such homicide was justifiable or excusable the jury shall render a general verdict of not guilty.

340.32 Dueling or challenging to a duel. Any person who shall engage in a duel with any deadly weapon, although no homicide ensue, or shall challenge another to fight such duel, or shall send or deliver any written or verbal message purporting or intending to be such challenge, although no duel ensue, shall be punished by imprisonment in the state prison not more than ten years nor less than three years.

340.33 Accepting challenge, etc. Any person who shall accept the challenge of another to fight a duel, or who shall knowingly carry or deliver any such challenge or message, whether a duel shall issue or not, and any person who shall be present at the fighting of a duel with deadly weapons as an aid, or second or surgeon, or who shall advise, encourage or promote such duel shall be punished by imprisonment in the state prison not more than two years nor less than one year.

340.34 Abuse for not fighting. Any person who shall post another, or in writing or print shall use any reproachful or contemptuous language to or concerning another for not fighting a duel or for not sending or accepting a challenge to fight a duel, shall be punished by imprisonment in the state prison not more than two years nor less than one year, or by fine not exceeding five hundred dollars nor less than one hundred dollars.

340.35 Mayhem. Any person with malicious intent to maim or disfigure, who shall cut out or maim the tongue, put out or destroy an eye, cut or tear off an ear, cut, slit or mutilate the nose or lip, or cut or disable a limb or member of another person, and any person privy to such intent who shall be present aiding in the commission of such offense shall be punished by imprisonment in the state prison, not more than fifteen years nor less than one year, or by fine not exceeding five thousand dollars nor less than two hundred dollars.

340.36 Assault with intent to murder or maim. Any person who shall assault another with intent to murder, not then being armed with a dangerous weapon, or with intent to maim or disfigure his person in any of the ways mentioned in section 340.35, shall be punished by imprisonment in the state prison not more than five years nor less than one year, or by fine not exceeding one thousand dollars nor less than one hundred dollars.

340.37 Attempt to murder by other means. Any person who shall attempt to commit the crime of murder by poisoning, drowning or strangling another person, or by any means not constituting an assault with intent to murder, shall be punished by imprisonment in the state prison not more than ten years nor less than one year.

340.38 Assault regardless of life. Any person who shall assault another in a manner evincing a depraved mind, regardless of human life, without any premeditated design to effect the death of the person assaulted and under such circumstances that if death had resulted the assailant would have been guilty of murder in the second degree, shall be punished by imprisonment in the state prison not more than eight years nor less than one year.

340.39 Assault and theft, being armed. Any person who shall assault another and shall feloniously rob, steal or take from his person any money or other property which may be the subject of larceny, such robber being armed with a dangerous weapon, or any firearm, loaded or unloaded, with intent, if resisted, to kill or maim the person robbed, or being so armed, who shall wound or strike the person robbed, shall be punished by imprisonment in the state prison not less than 3 years nor more than 30 years.

340.40 Assault with intent to murder or rob. Any person being armed with a dangerous weapon, or any firearm, whether loaded or unloaded, who shall assault another with intent to rob or murder, shall, upon conviction thereof, be punished by imprisonment in the state prison not more than 30 years nor less than one year.

340.41 Assault, great bodily harm. Any person who shall assault another with intent to do great bodily harm shall be punished by imprisonment in the state prison not more than three years nor less than one year, or in the county jail not more than one year, or by fine not exceeding five hundred dollars nor less than one hundred dollars.

340.42 Crime deemed assault with intent to do great bodily harm. Any person who shall wilfully and maliciously discharge any gun, pistol or other firearms or throw any dangerous missile into any railroad or street railway car or train, or motor vehicle as defined in chapter 85, upon or in which either passengers, employes or other persons are being carried, shall be deemed guilty of assault with intent to do great bodily harm under section 340.41, and shall be punished in accordance with the terms of that section, upon complaint duly made by any passenger or employe present upon such car or train at the time of the assault.

340.43 Assault and theft, unarmed. Any person who shall, by force and violence or by assault and putting in fear, feloniously rob, steal and take from the person of another any money or other property which may be the subject of larceny, such robber not being armed with a dangerous weapon, shall be punished by imprisonment in the state prison not more than seven years nor less than one year.

340.44 Assault, intent to rob. Any person, not being armed with a dangerous weapon, who shall assault another with force and violence and with intent to rob or steal shall be punished by imprisonment in the state prison not more than two years nor less than one year.

340.445 Conviction of assault when intent is not proved. Whoever is accused of committing an assault with intent to commit a felony and is acquitted of such intent may nevertheless be found guilty of the assault and if so found shall be punished by imprisonment not exceeding one year or by fine not exceeding \$500.

340.45 Threats to accuse of crime or injure. Any person who shall, either verbally or by any written or printed communication, maliciously threaten to accuse another of any crime or offense, or to do 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 his will or omit to do any lawful act, shall be punished by imprisonment in the state prison not more than two years nor less than one year or by fine not exceeding five hundred dollars nor less than one hundred dollars.

340.46 Rape. Any person who shall ravish and carnally know any female of the age of sixteen years or more, by force and against her will, shall be punished by imprison-

ment in the state prison not more than thirty years nor less than one year; but if the female shall be proven on the trial to have been, at the time of the offense, a common prostitute, he shall be so punished not more than seven years nor less than one year.

340.47 Carnal knowledge and abuse. Any person over eighteen years of age who shall unlawfully and carnally know and abuse any female under the age of eighteen years shall be punished by imprisonment in the state prison not more than thirty-five years nor less than one year, or by a fine not exceeding two hundred dollars; and any person of the age of eighteen years or under who shall unlawfully and carnally know and abuse any female under the age of eighteen years shall be punished by imprisonment in the state prison not more than ten years nor less than one year, or by fine not exceeding two hundred dollars.

340.48 Assault intending to rape or carnal knowledge and abuse. Any person who shall assault any female with intent to commit the crime of rape or of carnal knowledge and abuse shall be punished by imprisonment in the state prison not more than ten years nor less than one year.

340.485 Sex crimes. (1) RAPE AND RELATED CRIMES; COMMITMENT FOR PRESENTENCE EXAMINATION. If a person is convicted under sections 340.46 to 340.48, 351.34, or 351.41, the court shall commit him to the department of public welfare for a presentence social, physical and mental examination. The court and all public officials shall make available to the department upon its request all pertinent data in their possession in respect to the case.

(2) OTHER SEX CRIMES. If a person is convicted of any sex crime other than those specified in subsection (1), the court may commit him to the department for such a presentence examination, if the department certifies that it has adequate facilities for making such examination and is willing to accept such commitment. The court and all public officials shall make available to the department upon its request all pertinent data in their possession in respect to the case.

(3) TRANSPORTATION. When the court commits a person to the department in accordance with subsection (1) or (2) for presentence examination, the court shall order him conveyed by the proper county authorities at the sole expense of the county, to some place of detention approved or established by the department.

(4) REPORT OF EXAMINATION. Upon completion of the examination, but not later than 60 days after the date of the commitment order, a report of the results of the examination and the recommendations of the department shall be sent to the court.

(5) SENTENCE IMPOSED. If it appears from such report that the department does not recommend specialized treatment for his mental and physical aberrations, the court shall order the proper county authorities to bring him before the court at county expense and shall sentence him in the manner provided by law.

(6) COMMITMENT TO THE DEPARTMENT. If it appears from said report that the department recommends specialized treatment for his mental and physical aberrations, the court shall either place him on probation with the requirement as a condition of such probation, that he receive outpatient treatment in such manner as the court shall prescribe, or commit him to the department under this section.

(7) THE EFFECT OF APPEAL FROM A JUDGMENT OF CONVICTION. (a) The right of a convict to appeal from the judgment of conviction is not affected by this section.

(b) If a person who has been convicted and committed to the department appeals from a conviction, the execution of the commitment to the department shall not be stayed by the appeal except as provided in paragraph (c).

(c) If the committing court is of the opinion that the appeal was taken in good faith and that the question raised merits review by the appellate court, or when there has been filed with the court a certificate that a judge of an appellate court is of the opinion that questions have been raised that merit review, the judge of the court in which the person was convicted, or in the case of his incapacity to act, the judge by whom the certificate was filed, may direct that such person be left at liberty under such conditions as in the judge's opinion will insure his submission to the control of the department at the proper time if it is determined on the appeal that the department is entitled to custody.

(8) NOTICE OF COMMITMENTS; TREATMENT, TRANSFER, USE OF OTHER FACILITIES. (a) If a court commits a person to the department it shall at once notify the department of such action in writing.

(b) The department shall then arrange for his treatment in the institution best suited in its judgment to care for him. It may transfer him to or from any institution to provide for him according to his needs and to protect the public. The department may irrespective of his consent require participation by him in vocational, physical, educational and cor-

rectional training and activities; may require such modes of life and conduct as seem best adapted to fit him for return to full liberty without danger to the public; and may make use of other methods of treatment and any treatment conducive to the correction of the person and to the prevention of future violations of law by him.

(c) The department may make use of law enforcement, detention, parole, medical psychiatry, educational, correctional, segregative and other facilities, institutions and agencies, public or private, within the state. The department may enter into agreements with public officials for separate care and special treatment (in existing institutions) of persons subject to the control of the department under this section. Nothing herein contained shall give the department control over existing institutions or agencies not already under its control, or give it power to make use of any private agency or institution without its consent.

(d) Placement of a person by the department in any institution or agency not operated by the department, or his discharge by such institution or agency, shall not terminate the control of the department over him. No person placed in such institution or agency may be released therefrom except to the department or after approval of such release by the department.

(9) PERIODIC EXAMINATION. The department shall make periodic examinations of all persons within its control under this section for the purpose of determining whether existing orders and dispositions in individual cases should be modified or continued in force. These examinations may be made as frequently as the department considers desirable and shall be made with respect to every person at intervals not exceeding one year. The department shall keep written records of all examinations and of conclusions predicated thereon, and of all orders concerning the disposition or treatment of every person under its control. Failure of the department to examine a person committed to it or to make periodic examination shall not entitle him to a discharge from the control of the department, but shall entitle him to petition the committing court for an order of discharge, and the court shall discharge him unless it appears in accordance with subsection (13) that there is necessity for further control.

(10) PAROLE. Any person committed as provided in this section may be paroled if it appears to the satisfaction of the department after recommendation by a special review board, appointed by the department (a majority of whose members shall not be connected with the department) that he is capable of making an acceptable adjustment in society. The chief officer of the institution wherein he is confined shall report in writing at least annually to the department concerning his condition with a recommendation as to continued confinement or parole. The department may promulgate regulations for parole, revocation of parole, and the supervision of parolees.

(11) DURATION OF CONTROL. The department shall keep every person committed to it under this section under its control and shall retain him, subject to the limitations of subsection (12), under supervision and control, so long as in its judgment such control is necessary for the protection of the public. The department shall discharge any such person as soon as in its opinion there is reasonable probability that he can be given full liberty without danger to the public, but no person convicted of a felony shall, without the written approval of the committing court, be discharged prior to 2 years after the date of his commitment.

(12) TERMINATION OF CONTROL. Every person committed to the department who has not been discharged from its control as provided in subsection (11) unless the department has previously thereunto made an order directing that he remain subject to its control for a longer period and has applied to the committing court for a review of said order as provided in subsection (13) shall be discharged at the expiration of the maximum term prescribed by law for the offense for which he was convicted, subject to the provisions of section 53.11, or at the expiration of one year, whichever is the greater. For the purposes of this subsection, sentence shall begin at noon of the day of commitment by the court to the department.

(13) CONTINUANCE OF CONTROL; ORDER AND APPLICATION FOR REVIEW BY THE COMMITTING COURT. If the department is of the opinion that discharge of a person from its control at the time provided in subsection (12) would be dangerous to the public for reasons set forth in subsection (14), it shall make an order directing that he remain subject to its control beyond that period; and shall make application to the committing court for a review of that order at least 90 days before the time of discharge stated.

(14) ACTION OF COMMITTING COURT UPON APPLICATION FOR REVIEW; REASONS FOR CONTINUANCE OF CONTROL BY THE DEPARTMENT. (a) If the department applies to the committing court for the review of an order as provided in subsection (13), the court shall notify the person whose liberty is involved, and, if he be not sui juris, his parent or guardian as

practicable, of the application, and shall afford him opportunity to appear in court with counsel and of process to compel the attendance of witnesses and the production of evidence. He may have a doctor or psychiatrist of his own choosing; examine him in the institution to which he is confined or at some suitable place designated by the department. If he is unable to provide his own counsel, the court shall appoint counsel to represent him. He shall not be entitled to a trial by jury.

(b) If, after a hearing, the court finds that discharge from the control of the department of the person to whom the order applies would be dangerous to the public because of the person's mental or physical deficiency, disorder or abnormality the court shall confirm the order. If the court finds that discharge from the control of the department would not be dangerous to the public for the causes stated, the court shall order that he be discharged from the control of the department at the time stated in the original commitment.

(15) REVIEW BY COURT OF SUBSEQUENT ORDERS OF THE DEPARTMENT. (a) When an order of the department is confirmed as provided in subsection (14), the control of the department over the person shall continue, but unless he is previously discharged, the department shall within 5 years after the date of such confirmation make a new order and a new application for review thereof in accordance with this section. Such orders and applications may be repeated as often as in the opinion of the department it may be necessary for the protection of the public.

(b) Every person shall be discharged from the control of the department at the termination of the periods stated in paragraph (a) of this subsection unless the department has previously acted therein as required, and shall be discharged if the court fails to confirm the order as provided in subsection (14).

(16) APPEAL FROM JUDGMENT OF COMMITTING COURT. (a) If under the provisions of this section the court affirms an order of the department, the person whose liberty is involved may appeal to the proper appellate court for a reversal or modification of the order. The appeal shall be taken in the manner provided by law for appeals to said court from the judgment of an inferior court.

(b) At the hearing of an appeal the appellate court may base its judgment upon the record, or it may upon its own motion or at the request of either the appellant or the department refer the matter back for the taking of additional evidence.

(c) The appellate court may confirm the order of the lower court, or modify it, or reverse it and order the appellant to be discharged.

(d) Pending appeal the appellant shall remain under the control of the department.

(17) VOLUNTARY ADMISSION TO DIAGNOSTIC INSTITUTIONS; TREATMENT. Any person believing himself to be afflicted by a physical or mental condition which may result in sexual action dangerous to the public may apply upon forms prescribed by the department for voluntary admission to some institution which provides diagnosis for such persons. If the application is approved and he is admitted by the department, he shall be given a complete physical and mental examination. If it appears upon the examination that he is afflicted by a physical or mental condition that may prove dangerous to the public, such fact shall be certified to him and to the department. If he desires treatment, he may apply for admission to an institution designated by the department and upon approval of his application, he may be received in the designated institution and shall there receive the treatment indicated by his condition. If he is able to defray all or a part of the cost of his care and treatment, he shall be required to do that. If he desires to leave the institution he must give 5 days' written notice to the superintendent of the institution of his intention to leave. The department may provide outpatient treatment for him at his expense.

(18) CONFLICT OF PROVISIONS; EFFECT. All statutes conflicting with this section are superseded to the extent of the conflict and the provisions of this section shall prevail over conflicting provisions heretofore enacted.

(19) SEPARABILITY. It is the intent of the legislature that the provisions of this act are separable and if any provision shall be held unconstitutional, such decision shall not affect the remainder of this act.

History: 1951 c. 542.

340.49 Poisoning food, drink, etc. Any person who shall mingle any poison with any food, drink or medicine, with intent to kill or injure any other person, or who shall wilfully poison any spring, well or reservoir of water, with such intent, shall be punished by imprisonment in the state prison not more than ten years nor less than one year.

340.50 Narcotic poisoning. If any person shall unlawfully and wilfully administer to another, any chloroform, laudanum, chloral or other stupefying and overpowering drug, narcotic or anaesthetic agent by placing, dropping or pouring the same, or causing the

same to be placed, dropped or poured, or administer the same in any other manner into or upon any food or drink intended or prepared for the use of any person, or into or upon any dish, glass or vessel into which any such food or drink is intended to be placed or poured or in any other manner or knowing the said drug, narcotic or anaesthetic agent to have been placed, dropped or poured into or upon any such food or drink, or into or upon any such dish, glass or vessel shall cause or allow or permit another to eat or drink the same with intent thereby to enable such offender or any other person to commit or with the intent to assist such offender or other person in committing any felony, every such offender shall be guilty of a felony, and being thereof convicted shall be sentenced to pay a fine not exceeding five thousand dollars or by imprisonment at hard labor in the state prison not exceeding ten years.

340.51 Assault to commit felony; advice or attempt. Any person who shall assault another with intent to commit any burglary, robbery, rape or mayhem, or who shall advise or attempt to commit any arson or any other felony that shall fail in being committed, the punishment for which such assault, advice or attempt is not herein prescribed, shall be punished by imprisonment in the state prison not more than three years nor less than one year, or by fine not exceeding one thousand dollars nor less than one hundred dollars.

340.52 Advice or attempt to commit felony. Any person who shall advise the commission of or attempt to commit any felony as defined in section 353.31, that shall fail in being committed, the punishment for which such advice or attempt is not otherwise prescribed in these statutes, shall be imprisoned in the state prison not more than three years nor less than one year, or by fine not exceeding one thousand dollars, nor less than one hundred dollars.

340.53 Injuring railroad. Any person who shall wilfully, maliciously or wantonly place any obstruction upon the track of any steam, electric or cable railroad in this state, or take up or displace a rail, switch or signal, or remove a spike, or otherwise injure, break down or destroy the bridge, roadbed or other structure of such railroad shall be punished by imprisonment in the state prison not more than ten years nor less than one year.

340.54 Imprisonment, kidnaping, etc. (1) Any person who shall, without lawful authority, forcibly or secretly confine or imprison another within this state against his will, or who shall forcibly carry or send another out of this state or from place to place within this state against his will and without lawful authority, or who shall, without such authority, forcibly seize, confine, inveigle or kidnap another with intent to cause such person to be secretly confined or imprisoned in this state against his will or to be sent or carried out of this state against his will, or to be sold as a slave or in any way held to service against his will, or who with criminal intent shall remove therefrom anyone legally committed to any hospital or asylum for the insane, or to any institution for the care of the feeble-minded and epileptic, or to the Wisconsin child center, shall be deemed guilty of a felony and on conviction thereof shall be punished by imprisonment in the state prison not more than 15 years nor less than one year; and such offense may be tried in the county where it is committed, or in any county into which the person so kidnaped may be carried or sent; and upon the trial thereof the consent thereto of the person so seized, confined, inveigled or kidnaped shall not be a defense unless it shall be made satisfactorily to appear that such consent was not obtained by fraud, nor extorted or forced by duress or threats.

(2) Any person who, without lawful authority, but without criminal intent, shall remove therefrom anyone legally committed to any hospital or asylum for the insane, or to any institution for the care of the feeble-minded and epileptic, or to the Wisconsin child center, shall be guilty of a misdemeanor and shall be punished by a fine not exceeding \$200, or by imprisonment in the county jail not more than 60 days, or by both such fine and imprisonment.

340.55 Taking, enticing or detaining children. (1) Any person who shall, without lawful authority and for any immoral or unlawful purpose, forcibly take or carry away and remove, entice or inveigle any person under 18 years of age from the home or residence of such person or from the care and custody of his parent or guardian, or, without such authority, forcibly detain such person who is absent from his home or residence or the custody of his parent or guardian, or persuade or entice him to remain absent therefrom, shall be punished by imprisonment in the state prison for a term the minimum of which shall be 3 years and the maximum life imprisonment. It shall not be a defense to any prosecution brought under this section that such person consented to such removal or detention.

(2) Any person who shall without lawful authority and for an immoral or unlawful purpose entice or inveigle or attempt to entice or inveigle any child under the age of 18

years into any vehicle, building or secluded place shall be punished by imprisonment not less than 30 days nor more than 10 years.

340.56 Kidnaping penalty; consent of parent. Any person who shall take, carry away, decoy, entice away or secrete any child under the age of sixteen years, without the consent of the parent, guardian, or lawful custodian of said child, with the intent of causing any relative or other person to pay or offer to pay any sum as ransom or reward for the return or release of such child, shall be deemed guilty of a felony and upon conviction thereof shall be punished by imprisonment in the state prison during the life of the person so convicted. If no permanent injury results to the person wrongfully enticed away or secreted, the penalty shall be imprisonment in the state prison for not less than fifteen years nor more than thirty years. Upon the trial thereof the consent of the parent, guardian, or lawful custodian of such child shall not be a defense unless it shall be made satisfactorily to appear that such consent was not obtained by fraud, duress, or threats.

340.57 Assault and battery. Any person who shall commit an assault and battery upon another shall be punished by imprisonment in the county jail not more than six months nor less than ten days, or by fine not exceeding one hundred dollars nor less than one dollar, or by both such fine and imprisonment in the discretion of the court.

340.58 Abuse of inmates of institutions. Any officer or other person in charge of or employed in any hospital or asylum for the insane, county home, workhouse, state prison, state reformatory, home for women, jail, police station or other place of confinement, school for the deaf and dumb or blind, the Wisconsin child center, colony for the feeble-minded, house of correction, industrial school for boys or girls or orphan asylum who shall abuse, neglect or ill-treat any person confined therein or an inmate thereof, or who shall permit any other person so to do shall be punished by imprisonment in the county jail not more than one year or by fine not exceeding \$200.

340.59 Inciting violation of regulations. It shall be unlawful for any person to encourage, aid or abet any girl or woman committed to the home for women, or to the Wisconsin school for girls, during the term of her commitment, to violate the rules and regulations of such institution; and any person who is convicted of encouraging, aiding or abetting any woman or girl to so violate said rules, shall be deemed guilty of a misdemeanor and shall be fined in a sum not exceeding \$500 or be imprisoned in the county jail or house of correction for a period of an indeterminate sentence not exceeding 2 years.

340.60 Aiming gun at another. Any person who shall intentionally point or aim any gun, pistol or other firearm at or towards another, except in self-defense, in defense of his property, to prevent a felony or in the lawful discharge of official duty, shall be punished by imprisonment in the county jail not more than one year or by fine not exceeding \$500.

340.605 Criminal negligence in using weapons. (1) Any person who, by the operation or handling of a gun, pistol or other firearm or of a bow and arrow in a careless, reckless or negligent manner constituting or amounting to a high degree of negligence shall inflict injury upon any other person, shall be fined not more than \$1,000 or imprisoned in the county jail not to exceed one year, or both.

(2) No person shall so handle a gun, pistol or other firearm as to cause its discharge carelessly or heedlessly, in wilful or wanton disregard of the rights or safety of others. Any person violating this subsection shall be fined not more than \$100 or imprisoned not to exceed 6 months, or both, and in addition the court may revoke any license issued to him under chapter 29 and may further provide that no license shall be issued to him under chapter 29 for such fixed period of time as the court may deem just.

340.607 Leaving scene of accidental shooting. (1) Any person, who while hunting any wild animal or bird, discharges a firearm or arrow, and thereby injures or kills another person, shall forthwith give his name and address to such person if injured and render such assistance to him as may be necessary and obtain immediate medical or hospital care, and shall immediately thereafter report such injury or death to the sheriff or police of the locality in which such shooting took place.

(2) Any person failing to comply with subsection (1) shall be fined not less than \$5 nor more than \$5,000, or imprisoned in the county jail not less than 10 days nor to exceed one year, or both.

340.608 Hunting accident; failure to report. (1) Every person who shall have caused or been involved in an accident in which a human being has been injured by gunfire or by bow and arrow while hunting or trapping, or shall have inflicted an injury upon himself with firearm or with a bow and arrow while hunting or trapping, shall render a

report to the state conservation commission of Wisconsin at any of its field offices within 10 days after such injury unless such person be physically incapable of making the required report in which event it shall be the duty of the person or persons involved in the accident to designate an agent to file the report within the specified time.

(2) Any person who shall have been involved in an accident with firearm or bow and arrow while hunting or trapping, and who shall fail to submit the report required by this section shall be fined not more than \$50 or imprisoned not to exceed 3 months, or both, and in addition the court may revoke any license issued to him under chapter 29 and may further provide that no license shall be issued to him under chapter 29 for such fixed period of time that the court may deem just.

History: 1951 c. 78.

340.61 Use of firearms, etc., near park, etc. Any person who shall discharge or cause the discharge of any missile from any firearm, slung shot, bow and arrow or other weapon, within forty rods of any public park, square or inclosure owned or controlled by any municipality within this state and resorted to for recreation or pleasure, when such park, square or inclosure is wholly situated without the limits of such municipality, shall be punished by imprisonment in the county jail not exceeding sixty days or by fine of not more than twenty-five dollars nor less than one dollar.

340.62 Discharge of explosives in state parks. Any person who discharges or explodes or causes to be discharged or exploded for any purpose any dynamite, blasting powder or other similar explosive at any place or point within the boundaries of any park owned by the state of Wisconsin, unless the use of such explosive is necessary for carrying on works of improvement done by, for or under the authority of the state or done by, for or under the authority of the county or town wherein such park in whole or in part is situated, shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished for the first offense by a fine of not less than fifty dollars nor more than one hundred dollars or by imprisonment in the county jail for not less than thirty days nor more than six months, and for a second or subsequent offense by both such fine and imprisonment. This section shall not prevent the use of such explosive on any property which is under the development on July 1, 1917.

340.63 Wilful neglect of railroad employes. Any officer, agent, conductor, engineer or employe of any railroad company operating within this state who shall wilfully neglect or omit to ring or cause to be rung the bell on the engine of any train of cars or on an engine alone when about to cross or before crossing any street opened and used for travel in any city or village, or to blow the whistle eighty rods before crossing and ring the bell while crossing any highway, or to bring or cause to be brought to a full stop any railroad train or engine before arriving at or passing upon the track of another railroad and within four hundred feet of the junction or crossing of such railroad, or before arriving at or passing upon any drawbridge over any stream navigated by boats, vessels or other craft during the season of such navigation and when the draw of such bridge is necessary to be used for the passage of such boats, vessels or other craft, within six hundred feet of such drawbridge, when required by law, or to allow and permit the railroad train first arriving at such railroad crossing or junction to first pass over shall be punished by imprisonment in the county jail not more than six months or by fine not exceeding one hundred dollars.

340.64 Locking cars; dangerous articles. Any officer, agent, conductor or any employe of any railroad company operating within this state who shall wilfully run or cause to be run any railroad train or engine faster than at the rate permitted by section 192.29, while passing over the traveled streets of any city or village or until all such streets have been passed by such train or engine, or who shall lock or cause to be locked the doors of any passenger car occupied by any passenger, while such car is in motion or so as to prevent the free exit therefrom of any passenger at any time, or who shall use or authorize the use of any kerosene oil or other dangerously explosive burning fluid in lighting any passenger car, or who shall knowingly carry or cause or permit to be carried or transported on any baggage, mail, express or passenger car any powder, dynamite or other dangerously explosive substance, and any person who shall, secretly or surreptitiously, or by concealment or misrepresentation, ship or cause to be shipped upon any railroad train or car any powder, dynamite or other dangerously explosive substance without the knowledge of the proper officer, agent, conductor or employe in charge of such train or car shall be punished by imprisonment in the county jail not more than six months or by fine not exceeding one hundred dollars.

[340.65 Stats. 1941 repealed by 1943 c. 140]

340.66 Setting spring guns, etc. Any person who shall set or fix in any manner whatever any gun, pistol or other firearm, or any spring gun for the purpose of killing game of any kind by coming in contact therewith or with any string, wire or other contriv-

ance attached thereto, by which the same may be discharged, or for any other purpose, shall be punished by imprisonment in the state prison not less than six months nor more than three years; and if the death of any person is caused thereby he shall be deemed guilty of manslaughter in the second degree.

340.67 Leaving unguarded ice holes. Any person who shall remove ice or cause its removal from any stream, pond or lake and shall neglect to place around the margin of the opening made by such removal a fence, by setting posts of not less than two by four in size and with a fence board thoroughly nailed thereto not less than three and one-half feet above the surface of the ice on said stream, pond or lake shall be punished by imprisonment in the county jail not more than six months or by a fine not exceeding one hundred dollars.

340.68 Threshing machine joints to be covered. Any person owning or running any threshing machine in this state so constructed that any joint, knuckle or jack thereof is dangerously exposed, who shall neglect to cover or secure the same in some suitable manner so as to prevent injury to persons passing over or near the same, shall be punished by fine not exceeding fifty dollars nor less than two dollars.

340.69 Carrying and sale of weapons. Any person who shall go armed with any concealed and dangerous weapon shall be punished by imprisonment in the county jail not more than three hundred sixty-four days or by fine not exceeding five hundred dollars; provided, that the foregoing shall not apply to any policeman or officer authorized to serve process. Any minor or person in a state of intoxication who shall go armed with any pistol or revolver, or any dealer or other person who shall sell, loan or give any pistol or revolver to any minor shall be punished by imprisonment in the county jail not more than three hundred sixty-four days or by fine not exceeding five hundred dollars. It shall be the duty of all sheriffs, constables and other public police officers to take from any minor any pistol or revolver found in his possession, and for neglect thereof any such officer shall be punished as hereinbefore provided.

[340.695 Stats. 1931 repealed by 1933 c. 76 s. 2]

340.70 Fireworks regulated. (1) It is unlawful for any person to sell, expose or offer for sale, use, keep, discharge or explode any firecrackers, blank cartridges, toy pistols or cannons, toy canes or cannons in which explosives are used, contrivances using explosive caps or cartridges, sparklers, display wheels, the type of balloon which requires fire underneath to propel the same, torpedoes, sky rockets, Roman candles, aerial salutes, American or Chinese bombs or other fireworks of like construction, or any fireworks containing any explosive or flammable compound, or any tablets or other devices commonly used and sold as fireworks containing nitrates, chlorates, oxalates, sulphides of lead, barium, antimony, arsenic, mercury, nitroglycerine, phosphorus or any compound containing any of the same or other modern explosives, within the state of Wisconsin, except as hereinafter provided.

(2) Nothing herein contained shall prohibit the use of fireworks other than those prohibited by subsection (6) for pyrotechnic displays given by public authorities, fair associations, amusement parks, park boards, civic organizations or groups of individuals that have been granted a permit for such display by the mayor of the city, president of the village or chairman of the town wherein the display is to be given.

(a) The issuing officer may require an indemnity bond with good and sufficient sureties for the payment of all claims that may arise by reason of injuries to person or property from the handling, use or discharge of fireworks under such permit. Such bond, if required, shall be taken in the name of the city, village or town wherein the fireworks display is to be given, and any person injured thereby may bring an action on said bond in his own name to recover the damage he has sustained, but the aggregate liability of the surety to all persons shall in no event exceed the amount of such bond. The bond, if required, together with a copy of the permit shall be filed in the office of the clerk of such city, village or town.

(3) Nothing herein contained shall prohibit the use or sale of blank cartridges for circus or theatrical purposes, or signal purposes in athletic contests or sports events, or use by militia, police or military organizations; nor the use or sale of colored flares or torpedoes for railway, aircraft, or highway signal purposes.

(4) Nothing in this section shall be construed to prohibit any resident wholesaler, dealer or jobber from selling fireworks other than those prohibited by subsection (6) at wholesale, but only when the same are shipped or delivered directly outside of the state of Wisconsin or to an organization or group granted a permit under subsection (2).

(5) The following provisions shall apply to places where fireworks are stored or handled:

(a) Such premises shall be equipped with fire extinguishers approved by the fire chief or chief engineer of the fire department in the community in which such premises are located;

(b) Smoking shall be prohibited where fireworks are stored or handled;

(c) It is hereby made the duty of every wholesaler, dealer or jobber keeping, storing or handling, within the state of Wisconsin, fireworks of any description to notify the fire chief or chief engineer of the fire department in the community wherein such fireworks are kept, stored or handled, immediately of the receipt of such fireworks, or the removal thereof from one location to another, and the location where such fireworks are stored. No such fireworks shall be stored in any building used for dwelling purposes or in any building situated within 50 feet of any building used for dwelling purposes, or in places of public assemblage, or within 50 feet of any gasoline pump, gasoline filling station or gasoline bulk station, or any building in which gasoline or volatile liquid is sold in quantities in excess of one gallon.

(6) Under no circumstances shall any person sell, keep for sale, manufacture or bring into this state for use therein any fire balloon, mortars excepting mortars used for special display purposes or cannon, or any explosive cane, toy pistol, toy revolver or other contrivance using explosive caps or cartridges, any Chinese firecrackers more than 2 inches in length or more than three-eighths inch in diameter, outside measurements of container, or any article containing a compound of mercury or yellow phosphorus.

(7) A parent or legally appointed guardian of any minor who shall knowingly permit such minor to purchase or have in his possession or to discharge any fireworks forbidden by this section shall be deemed to have violated this section and such parent or guardian shall be personally liable for any damage caused by such possession or discharge of fireworks.

(8) The mayor of each city, the president of each village, the chairman of each town, policemen, firemen and all other peace officers are charged with the duty of enforcing this section in their respective jurisdictions. Failure to do so shall constitute grounds for removal from office. It shall be the duty of the industrial commission to see that the provisions of this section are enforced throughout the state.

(9) Any person who shall violate any provision of this section shall be fined not less than \$25 nor more than \$500, or imprisoned not less than 30 days nor more than 6 months, or both. Each day on which such violation continues shall constitute a separate and distinct offense.

340.71 Getting on and off cars. Any person under the age of seventeen years who shall get upon, attempt to get upon, cling to, jump or step from any railroad car or train while the same is in motion shall be punished by fine of not more than twenty dollars nor less than two dollars, provided that this section shall not apply to the employes of any railway or express company.

340.72 Assault and abusive language. Any person who shall assault another, when not excusable or justifiable, or who shall use in reference to and in the presence of another, or in reference to and in the presence of any member of his family, abusive or obscene language, intended or naturally tending to provoke an assault or any breach of the peace, shall be punished by imprisonment in the county jail not more than three months or by fine not exceeding one hundred dollars. The provisions of this section shall not be applicable to any city or village which has enacted an ordinance under its charter for the punishment of the same or similar offense.

340.73 Sale, transportation, etc., of explosive for unlawful purpose. Any person who shall make, manufacture, compound, buy, sell, give away, offer for sale or to give away, transport or have in possession any nitroglycerine, giant, oriental or thunderbolt powder, dynamite, ballistile, fulgarite, detonite or any other explosive compound with intent that the same shall be used in this state or anywhere else for the injury or destruction of public or private property or the assassination, murder, injury or destruction of any person or persons, either within this state or elsewhere, or knowing that such explosive compounds are intended to be used by any other person or persons for any such purpose, shall be punished by imprisonment in the state prison not more than ten years nor less than three years or by fine not exceeding one thousand dollars nor less than five hundred dollars.

340.74 Aiding in so doing. All persons aiding, abetting or in any manner assisting in the manufacture, compounding, buying, selling, offering for sale or transporting any explosive compounds either by furnishing material or ingredients or soliciting or contributing money or other property with which to purchase said materials or ingredients, or by assisting by skill or labor, or by acting as agents for the principal, or in any manner aiding as accessories before the fact, knowing that any of such explosive compounds are intended to be used by the principals or any other person or persons for any of the purposes men-

tioned in section 340.73, shall be deemed principals, and may be convicted and punished in the same manner and to the same extent as such principal or principals.

340.75 Denial of rights. Any person who shall deny to any other person, in whole or in part, the full and equal enjoyment of the accommodations, advantages, facilities and privileges of inns, restaurants, saloons, barber shops, eating houses, public conveyances on land or water, or any other place of public accommodation or amusement, except for reasons applicable alike to all persons of every race, creed, national origin or ancestry, or color, or who shall aid or incite such denial, or require any person to pay a larger sum than the regular rate charged other persons for such accommodations, advantages, facilities and privileges or any of them, or who shall directly or indirectly publish, circulate, issue, display, post or mail any written or printed communication, notice or advertisement to the effect that any of the accommodations, advantages, facilities or privileges of any such place will be denied to any person on account of his race, creed, national origin or ancestry, or color, or that the patronage of any such person is unwelcome, objectionable or not acceptable, or who shall refuse to sell or furnish any type of automobile insurance or charge a higher rate for such insurance because of race, creed, national origin or ancestry, or color, shall be liable to the person aggrieved thereby in damages not less than \$25 with costs, and shall also be punished for every such offense by fine of not more than \$100 or be imprisoned in the county jail not exceeding 6 months, or by both such fine and imprisonment; provided, that a judgment in favor of the party aggrieved or the imposition of a fine or imprisonment shall bar any other proceeding.

History: 1951 c. 575.

340.76 Use of engine on highway at night. No person shall cause any steam engine to be propelled or hauled upon or over any highway in the nighttime without causing some person carrying a good clean lantern, giving a strong, clear red light, to go and be at least twenty and not more than thirty rods in advance of such engine; such person so in advance shall, upon meeting any person riding or driving any animal or animals and desiring to pass such engine, signal the person in charge thereof to stop the same, and the person in charge of such engine shall, immediately upon being made aware of the signal, stop the engine and, together with the person so in advance thereof, render all assistance possible to enable the person so riding or driving to pass such engine in safety. Every violation of this section shall be punishable by imprisonment in the county jail not more than twenty days or by fine not exceeding fifteen dollars nor less than five dollars.

340.77 Obstructing stream. Any person who shall unlawfully and maliciously place any obstruction in the channel of any stream or canal, improved or constructed for navigation purposes, whereby the death of any person shall be caused, shall be punished by imprisonment in the state prison during life.

[340.78 Stats. 1927 repealed by 1929 c. 357 s. 1]

340.79 Unlawful operation of corn shredders. Any person, firm or corporation who shall violate any of the provisions of sections 167.12 to 167.15 shall be punished by a fine of not less than twenty-five or more than one hundred dollars for each offense.

340.80 Use of loud speakers. No person, firm or corporation occupying or having charge of any building or premises, or any part thereof, located upon or along the shore of any inland lake, shall cause, suffer or allow therein or thereon any loud, excessive or unusual noise in the operation or use of any radio, phonograph, or other mechanical or electrical sound making or reproducing device, instrument or machine, which loud, excessive or unusual noise shall disturb the comfort, quiet or repose of persons therein or in the vicinity. Any violation of this section shall be punished by a fine of not less than \$5 nor more than \$50.

340.85 Hazing prohibited. Any person engaging in or inciting hazing in any public school of this state shall be punished by imprisonment in the county jail for not more than sixty days, or by fine not exceeding two hundred dollars, or by both such fine and imprisonment.

340.86 Capping and filling wells or similar structures. (1) This section applies only to counties of a population of 500,000 or more.

(2) The owner of any real estate shall securely protect any well, seepage pit, cistern, cesspool, septic tank, or other similar structures in active use with a cover of concrete, metal or wood covered with sheet metal, securely fastened and of sufficient weight so it cannot be removed by small children and so as to make it free from danger to persons going upon such real estate.

(3) Whenever any shallow dug well, seepage pit, cistern, cesspool or septic tank is abandoned or its use discontinued, the owner of the real estate upon which it is located shall promptly fill the same to grade.

(4) Whenever any drilled, bored or deep dug well, except test wells of 10 inches or less in diameter, is abandoned or its use discontinued, the owner of the real estate upon which it is located shall promptly fill the same, either with alternate layers of sand or clay and concrete, and seal with a concrete cover at least 5 inches thick, or in accordance with recommendations of the state board of health.

(5) Whenever any mine shaft, exploration shaft or test well is abandoned or its use discontinued, the operator or contractor shall promptly fill same to grade or inclose the same with a fence of strong woven wire not less than 46 inches wide with one barbwire above or cap same with a reinforced concrete slab at least 6 inches thick or with a native boulder at least 3 times the diameter of the top of the shaft or test well bore. The strands of the woven wire shall not be smaller than No. 12 wire and the cross wires and meshes shall not be smaller than No. 16 wire; the strands shall not be more than 12 inches apart, and the meshes shall not exceed 8 inches square. All wires must be tightly stretched and securely fastened to sufficient posts firmly set not more than 8 feet apart. In case any person shall neglect to repair or rebuild such fence which he is so required to build and maintain, any person may complain to the state industrial commission or to the local governing body, which shall give notice in writing to the person who is required to build and maintain such fence. The state industrial commission or the local governing body shall then proceed to examine the fence, and if it shall determine that such fence is insufficient, it shall notify the person responsible for its erection and maintenance and direct him to repair or rebuild the fence within such time as it shall deem reasonable. Any person refusing to comply with such order shall be subject to the penalties provided.

(6) Existing abandoned mine shafts, exploration shafts or test wells shall be securely protected by owner of the real estate upon which it is located.

(7) Any person violating this section shall be fined not less than \$10 nor more than \$200 or imprisoned not exceeding 6 months, or both.

(8) Any violation of this section coming to the attention of the state industrial commission or municipal authorities shall be reported to the attorney-general or district attorney for prosecution.

History: 1951 c. 562.