

CHAPTER 941

CRIMES AGAINST PUBLIC HEALTH AND SAFETY

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VEHICLES.

941.01 Negligent operation of vehicle.

(1) Whoever endangers another's safety by a high degree of negligence in the operation of a vehicle, not upon a highway as defined in s. 340.01, is guilty of a Class A misdemeanor.

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

(3) Upon conviction hereunder, no revocation or suspension of operator's license shall follow.

History: 1977 c. 173.

941.03 Highway obstruction. (1) Whoever creates an unreasonable risk and high probability of causing death or great bodily harm to another by intentionally placing an obstacle in or upon a highway, damaging a highway, removing or tampering with a sign or signal used for the guidance of vehicles, giving a false traffic signal, or otherwise interfering with the orderly flow of traffic and realizes that he or she thereby creates such risk and probability is guilty of a Class C felony.

(2) In this section, "highway" means any public way or thoroughfare, including bridges thereon, any roadways commonly used for vehicular traffic, whether public or private, any railroad, including street and interurban railroads, and any navigable waterway or airport.

History: 1977 c. 173.

941.04 Mooring watercraft to railroad tracks or fixtures. (1) Whoever does either of the following under circumstances endangering human life is guilty of a Class D felony:

(a) Moors a navigation craft to a railroad track, bridge, signal, switch or other railroad structure; or

(b) Moors or anchors a navigation craft against a railroad embankment or structure so as to obstruct or interfere with the operation of vehicles on the railroad.

History: 1977 c. 173.

FIRE.

941.10 Negligent handling of burning material. (1) Whoever handles burning material in a highly negligent manner is guilty of a Class A misdemeanor.

(2) Burning material is handled in a highly negligent manner if, under the circumstances, the person should realize that he creates an unreasonable risk and high probability of death or great bodily harm to another or serious damage to another's property.

History: 1977 c. 173.

941.11 Unsafe burning of buildings. Whoever does either of the following is guilty of a Class D felony:

(1) Intentionally burns his own building under circumstances in which he should realize he is creating an unreasonable risk of death or great bodily harm to another or serious damage to another's property; or

(2) Intentionally burns a building of one who has consented to the destruction thereof but does

so under circumstances in which he should realize he is creating an unreasonable risk of death or great bodily harm to another or serious damage to a third person's property.

History: 1977 c. 173.

941.12 Interfering with fire fighting. (1) Whoever intentionally interferes with the proper functioning of a fire alarm system or the lawful efforts of fire fighters to extinguish a fire is guilty of a Class E felony.

(2) Whoever interferes with, tampers with or removes, without authorization, any fire extinguisher, fire hose or any other fire fighting equipment, is guilty of a Class A misdemeanor.

(3) Whoever interferes with accessibility to a fire hydrant by piling or dumping material near it without first obtaining permission from the appropriate municipal authority is guilty of a Class C misdemeanor. Every day during which the interference continues constitutes a separate offense.

History: 1977 c. 173.

941.13 False alarms. Whoever intentionally gives a false alarm to any public officer or employe, whether by means of a fire alarm system or otherwise, is guilty of a Class A misdemeanor.

History: 1977 c. 173.

WEAPONS.

941.20 Reckless use of weapons. (1) Whoever does any of the following is guilty of a Class A misdemeanor:

(a) Endangers another's safety by reckless conduct in the operation or handling of a firearm, airgun, knife or bow and arrow; or

(b) Operates or goes armed with a firearm while he is under the influence of an intoxicant; or

(c) Intentionally points a firearm at or toward another.

(d) While on the lands of another discharges a firearm within 100 yards of any building devoted to human occupancy situated on and attached to the lands of another without the express permission of the owner or occupant of the building. "Building" as used in this paragraph does not include any house trailer, mobile home, tent, bus, truck, vehicle or similar portable unit.

(2) Whoever does any of the following is guilty of a Class E felony:

(a) Intentionally discharges a firearm into vehicle or building under circumstances in which he should realize there might be a human being present therein; or

(b) Sets a spring gun.

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

History: 1977 c. 173.

Pointing a firearm is not a lesser included offense of armed robbery and a defendant can be convicted of both. *State v. Smith*, 55 W (2d) 304, 198 NW (2d) 630.

941.22 Possession of pistol by minor. (1)

Any minor who goes armed with a pistol or any person who intentionally sells, loans or gives a pistol to a minor is guilty of a Class A misdemeanor.

(2) This section does not apply to a minor who is armed with a pistol when such pistol is being used in target practice under the supervision of an adult nor does it apply to an adult who transfers a pistol to a minor for use only in target practice under his supervision.

(3) All sheriffs, their undersheriffs and deputies, constables, and policemen shall take from a minor any pistol found in his possession in violation of this section.

(4) In this section "pistol" means any firearm having a barrel less than 12 inches long.

History: 1977 c. 173

Violation of (1) was not negligence per se. *Olson v. Ratzel*, 89 W (2d) 227, 278 NW (2d) 238 (Ct. App. 1979).

941.23 Carrying concealed weapon. Any person except a peace officer who goes armed with a concealed and dangerous weapon is guilty of a Class A misdemeanor.

History: 1977 c. 173; 1979 c. 115, 221.

The burden is on the defendant to prove that he is a peace officer so as to come within the exception. *State v. Williamson*, 58 W (2d) 514, 206 NW (2d) 613.

Totality of circumstances justified search for concealed weapon. *Penister v. State*, 74 W (2d) 94, 246 NW (2d) 115.

Judges are not peace officers authorized to carry concealed weapons. 69 Atty. Gen. 66.

941.235 Carrying firearm in public building. (1) Any person who goes armed with a firearm in any building owned or leased by the state or any political subdivision of the state is guilty of a Class B misdemeanor.

(2) This section does not apply to peace officers or armed forces or military personnel who go armed in the line of duty or to any person duly authorized by the chief of police of any city or the sheriff of any county to possess a firearm in any building under sub. (1).

History: 1979 c. 221.

941.24 Possession of switchblade knife.

(1) Whoever manufactures, sells or offers to sell, transports, purchases, possesses or goes armed with any knife having a blade which opens by pressing a button, spring or other device in the handle or by gravity or by a thrust or movement is guilty of a Class A misdemeanor.

(2) Within 30 days after April 16, 1959, such knives shall be surrendered to any peace officer.

History: 1977 c. 173.

941.25 Manufacturer to register machine guns.

Every manufacturer shall keep a register of all machine guns manufactured or handled by him or her. This register shall show the model and serial number, date of manufacture, sale, loan, gift, delivery or receipt, of every machine gun, the name, address, and occupation of the person to whom the machine gun was sold, loaned, given or delivered, or from whom it was received; and the purpose for which it was acquired by the person to whom the machine gun was sold, loaned, given or delivered, or from whom received. Upon demand every manufacturer shall permit any marshal, sheriff or police officer to inspect his or her entire stock of machine guns, parts, and supplies therefor, and shall produce the register required under this section for inspection. Whoever violates any provision of this section is subject to a Class B forfeiture.

History: 1977 c. 173.

941.26 Machine guns and other weapons; use in certain cases; penalty.

(1) No person may sell, possess, use or transport any machine gun or other full automatic firearm. No person may sell, possess, use or transport any bomb, hand grenade, projectile, shell or other container of any kind or character into which tear gas or any similar substance is used or placed for use to cause bodily discomfort, panic, or damage to property.

(2) Any person violating any of the provisions of this section is guilty of a Class E felony.

(3) The provisions of this section shall not apply to the sale, possession, use or transportation of any such weapons or containers to or by any armed forces or national guard personnel in line of duty, any civil enforcement officer of the state or of any city or county, or any person duly authorized by the chief of police of any city or the sheriff of any county to sell, possess, use or transport such weapons or containers. The restriction on transportation contained in this section shall not apply to common carriers.

History: 1977 c. 173.

941.27 Machine guns. (1) DEFINITION. In ss. 941.25 and 941.26, "machine gun" includes a weapon of any description by whatever name known which was manufactured to discharge more than 2 shots or bullets by a single function of the firing device.

(2) EXCEPTIONS. Sections 941.25 and 941.26 shall not prohibit or interfere with the manufacture for, and sale of, machine guns to the military forces or the peace officers of the United States or of any political subdivision thereof, or the transportation required for that purpose; the possession of a machine gun for scientific purpose, or the possession of a machine gun not usable as a weapon and possessed as a curiosity, ornament or keepsake; or the possession of a machine gun other than one adapted to use pistol cartridges for a purpose manifestly not aggressive or offensive.

History: 1977 c. 173.

941.28 Possession of short-barreled shotgun or short-barreled rifle. (1) In this section:

(a) "Rifle" means a firearm designed or redesigned, made or remade, and intended to be fired from the shoulder or hip and designed or redesigned and made or remade to use the energy of a propellant in a metallic cartridge to fire through a rifled barrel a single projectile for each pull of the trigger.

(b) "Short-barreled rifle" means a rifle having one or more barrels having a length of less than 16 inches measured from closed breech or bolt face to muzzle or a rifle having an overall length of less than 26 inches.

(c) "Short-barreled shotgun" means a shotgun having one or more barrels having a length of less than 18 inches measured from closed breech or bolt face to muzzle or a shotgun having an overall length of less than 26 inches.

(d) "Shotgun" means a weapon designed or redesigned, made or remade, and intended to be fired from the shoulder or hip and designed or redesigned and made or remade to use the energy of a propellant in a fixed shotgun shell to fire through a smooth bore either a number of ball shot or a single projectile for each single pull of the trigger.

(2) No person may sell or offer to sell, transport, purchase, possess or go armed with a short-barreled shotgun or short-barreled rifle.

(3) Any person violating this section is guilty of a Class E felony.

(4) This section does not apply to the sale, purchase, possession, use or transportation of a short-barreled shotgun or short-barreled rifle to or by any armed forces or national guard personnel in line of duty, any peace officer of the

United States or of any political subdivision of the United States or any person who has complied with the licensing and registration requirements under 26 USC 5801 to 5872. This section does not apply to the manufacture of short-barreled shotguns or short-barreled rifles for any person or group authorized to possess these weapons. The restriction on transportation contained in this section does not apply to common carriers. This section shall not apply to any firearm that may be lawfully possessed under federal law, or any firearm that could have been lawfully registered at the time of the enactment of the national firearms act of 1968.

(5) Any firearm seized under this section is subject to s. 968.20 (3) and is presumed to be contraband.

History: 1979 c. 115.

941.29 Possession of a firearm. (1) A person is subject to the requirements and penalties of this section if he or she has been convicted of a felony in this state or of a crime elsewhere that would be a felony if committed in this state.

(2) Any person specified in sub. (1) who, subsequent to the conviction for the felony or other crime, as specified in sub. (1), possesses a firearm is guilty of a Class E felony.

(3) Any firearm involved in an offense under sub. (2) is subject to s. 968.20 (3).

(4) A person is concerned with the commission of a crime, as specified in s. 939.05 (2) (b), in violation of this section if he or she knowingly furnishes a person with a firearm in violation of sub. (2).

(5) This section does not apply to any person specified in sub. (1) who has received a pardon with respect to the crime or felony specified in sub. (1) and has been expressly authorized to possess a firearm under 18 USC app. 1203.

(6) The prohibition against firearm possession under this section does not apply to any correctional officer employed before May 1, 1982, who is required to possess a firearm as a condition of employment. This exemption applies if the officer is eligible to possess a firearm under any federal law and applies while the officer is acting in an official capacity.

History: 1981 c. 141, 317.

941.295 Possession of electric weapon.

(1) On or after July 1, 1982, whoever sells, transports, manufactures, possesses or goes armed with any electric weapon is guilty of a Class E felony.

(2) Subsection (1) does not apply to:

(a) Any peace officer.

(b) Any armed forces or national guard personnel while on official duty.

(c) Any corrections personnel in the department of health and social services while on official duty.

(d) Any manufacturer or seller whose electric weapons are used in this state solely by persons specified in pars. (a) to (c).

(e) Any common carrier transporting electric weapons.

(3) During the first 30 days after May 7, 1982, the electric weapons may be surrendered to any peace officer. Peace officers shall forward electric weapons to the crime laboratory if the retention of those weapons is not necessary for criminal prosecution purposes.

(4) In this section, "electric weapon" means any device which is designed, redesigned, used or intended to be used, offensively or defensively, to immobilize or incapacitate persons by the use of electric current.

History: 1981 c. 348.

OTHER DANGEROUS INSTRUMENTALITIES AND PRACTICES.

941.30 Endangering safety by conduct regardless of life. Whoever endangers another's safety by conduct imminently dangerous to another and evincing a depraved mind, regardless of human life, is guilty of a Class D felony.

History: 1977 c. 173.

Proof that defendant entered a home, pointed a gun at a person, and stated that he intended to kill him is sufficient to establish a depraved mind. *Kwosek v. State*, 60 W (2d) 276, 208 NW (2d) 308.

The offense created by this section is a lesser included offense of the crime created under 940.23. What constitutes a "depraved mind" discussed. *State v. Weso*, 60 W (2d) 404, 210 NW (2d) 442.

This section is not unconstitutionally vague. Where defendant attempted to elude police at speeds up to 60 m.p.h. in downtown rush hour traffic, but made attempts to avoid collision, conduct did not evince a depraved mind. *Balistreri v. State*, 83 W (2d) 440, 265 NW (2d) 290 (1978).

See note to 940.21, citing *Kirby v. State*, 86 W (2d) 292, 272 NW (2d) 113 (Ct. App. 1978).

Endangering safety by conduct regardless of life is lesser included offense of attempted first-degree murder. *Walker v. State*, 92 W (2d) 690, 286 NW (2d) 2 (Ct. App. 1979); (aff'd) 99 W (2d) 687, 299 NW (2d) 861 (1981).

Breaking 2 wine bottles over victim's head was inherently, apparently and consciously dangerous to life. Actual injury is not an essential element of this crime. *State v. Stawicki*, 93 W (2d) 63, 286 NW (2d) 612 (Ct. App. 1979).

See note to 940.01, citing *State v. Cartagena*, 99 W (2d) 657, 299 NW (2d) 872 (1981).

Evidence that accused drove car directly towards officer was sufficient to support conviction under this section. *State v. Toliver*, 104 W (2d) 289, 311 NW (2d) 591 (1981).

941.31 Possession of explosives for unlawful purpose. Whoever makes, buys, transports, possesses, or transfers any explosive compound or offers to do the same, either with intent to use such explosive to commit a crime or knowing that another intends to use it to commit a crime, is guilty of a Class C felony.

History: 1977 c. 173.

941.32 Administering dangerous or stupefying drug. Whoever administers to another or causes another to take any poisonous, stupefying, overpowering, narcotic, or anesthetic substance with intent thereby to facilitate the commission of a crime is guilty of a Class C felony.

History: 1977 c. 173.

941.325 Placing foreign objects in edibles. Whoever places objects, drugs or other substances in candy or other edibles with the intent to cause bodily harm to another person is guilty of a Class E felony.

History: 1971 c. 72; 1977 c. 173.

941.33 Hazing. Whoever engages in or incites hazing which results in or is likely to result in bodily harm to another in any school is guilty of a Class C misdemeanor.

History: 1977 c. 173.

941.34 Fluoroscopic shoe-fitting machines. Whoever uses, or possesses or controls with intent to so use, any fluoroscopic or X-ray machine for the purpose of shoe-fitting or attempting to fit shoes, or who knowingly permits such machine, whether in use or not, to remain on his or her premises, is subject to a Class B forfeiture. Each day of such use, possession or control shall constitute a separate violation of this section.

History: 1977 c. 173.

941.35 Emergency telephone calls. (1) As used in this section:

(a) "Party line" means a subscriber's line telephone circuit, consisting of 2 or more main telephone stations connected therewith, each station with a distinctive ring or telephone number.

(b) "Emergency" means a situation in which property or human life are in jeopardy and the prompt summoning of aid is essential.

(2) Whoever intentionally refuses to yield or surrender the use of a party line to another person immediately upon being informed by such other person that he or she wants to report a fire or summon police, medical or other aid in

case of emergency, is subject to a Class B forfeiture.

(3) Whoever intentionally asks for or requests the use of a party line on the pretext that an emergency exists, knowing that no emergency in fact exists, is subject to a Class B forfeiture.

(4) Every telephone directory printed and distributed to the members of the general public after September 1, 1965, shall contain a notice to be prominently printed and displayed in bold-faced type, stating in substance the conduct prohibited by this statute, and to be preceded by the word "Warning". This subsection shall not apply to those directories distributed solely for business advertising purposes, commonly known as classified directories.

History: 1977 c. 173.

941.36 Fraudulent tapping of electric wires or gas or water meters or pipes. (1)

Whoever, without permission and for the purpose of obtaining electrical current, gas or water with intent to defraud any vendor of electricity, gas or water by doing any of the following, is guilty of a Class C misdemeanor:

(a) Connects or causes to be connected by wire or any other device with the wire, cables or conductors of any such vendor.

(b) Connects or disconnects the meters, pipes or conduits of the vendor or in any other manner tampers or interferes with the meters, pipes or conduits, or connects with the meters, pipes or conduits by pipes, conduits or other instruments.

(2) The existence of any of the conditions with reference to meters, pipes, conduits or attachments, described in this section, is presumptive evidence that the person to whom gas, electricity or water is at the time being furnished by or through the meters, pipes, conduits or attachments has, with intent to defraud, created or caused to be created the conditions. The presumption does not apply to any person furnished with gas, electricity or water for less than 31 days or until there has been at least one meter reading.

History: 1977 c. 311.