

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) 1. In this paragraph, "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 rail-ways, and any navigable waterway or airport.

2. The property damaged is a vehicle or highway 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. 940.41 (3) 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; 1981 c. 118 s. 9; 1987 a. 399.

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.

Criminal damage to property is lesser-included offense of arson, 943.02. *State v. Thompson*, 146 W (2d) 554, 431 NW (2d) 716 (Ct. App. 1988).

943.012 Criminal damage to religious and other property. Whoever intentionally causes damage to any physical property of another without the person's consent and with knowledge of the character of the property is guilty of a Class E felony if the property consists of one or more of the following:

(1) Any church, synagogue or other building, structure or place primarily used for religious worship or another religious purpose.

(2) Any cemetery, mortuary or other facility used for burial or memorializing the dead.

(3) Any school, educational facility or community center publicly identified as associated with a group of persons of a particular race, religion, color, disability, sexual orientation, national origin or ancestry or by an institution of any such group.

(4) Any personal property contained in any property under subs. (1) to (3) if the personal property has particular significance or value to any group of persons of a particular race, religion, color, disability, sexual orientation, national origin or ancestry and the actor knows the personal property has particular significance or value to that group.

History: 1987 a. 348.

943.015 Criminal damage; threat; property of department of revenue employe. (1) In this section, "family member"

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means a parent, spouse, sibling, child, stepchild or foster child.

(2) Whoever intentionally causes or threatens to cause damage to any physical property which belongs to a department of revenue official, employe or agent or his or her family member under all of the following circumstances is guilty of a Class D felony:

(a) At the time of the act or threat, the actor knows or should have known that the person whose property is damaged or threatened is a department of revenue official, employe or agent or a member of his or her family.

(b) The official, employe or agent is acting in an official capacity at the time of the act or threat or the act or threat is in response to any action taken in an official capacity.

(c) There is no consent by the person whose property is damaged or threatened.

History: 1985 a 29.

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.

Mortgagee's interest is protected under (1) (a); evidence of fire insurance was admissible to prove violation of (1) (a). State v. Phillips, 99 W (2d) 46, 298 NW (2d) 239 (Ct. App. 1980).

See note to 943.01, citing State v. Thompson, 146 W (2d) 554, 431 NW (2d) 716 (Ct. App. 1988).

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, 943.012, 943.02, 943.03 or 943.04, depending on the facts of the particular case.

History: 1987 a 348.

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 fire fighters or law enforcement officers.

History: 1977 c. 173; 1985 a 135 s 83 (3).

943.065 Injury caused by arson: treble damages. (1) Any person who incurs injury to his or her person or his, her or its business or property by reason of a violation of s. 943.02, 943.03, 943.04, 943.05 or 943.06, including the state or any municipality which incurs costs in extinguishing or investigating the cause of a fire under those circumstances, may sue the person convicted of the violation for damages. A court shall award treble damages, plus costs and attorney fees, to a person, including the state or a municipality, proving injury under this section. The damages, costs and fees are payable only by the person convicted of the violation. This section does not impose any duty upon a company providing insurance coverage to defend its insured in any action brought under this section.

(2) The treble damages requirement under sub. (1) applies in any wrongful death action under s. 895.03 based on a violation specified in sub. (1).

History: 1981 c. 78.

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.

Entry into hotel lobby open to public with intent to steal is not burglary. *Champlin v. State*, 84 W (2d) 621, 267 NW (2d) 295 (1978).

See note to 939.72, citing *Dumas v. State*, 90 W (2d) 518, 280 NW (2d) 310 (Ct. App. 1979).

Court of appeals erred in finding insufficient evidence to prove intent to steal. *State v. Bowden*, 93 W (2d) 574, 288 NW (2d) 139 (1980).

Under facts of case, employer did not give defendant employee consent to enter premises after hours using key provided by employer. *State v. Schantek*, 120 W (2d) 79, 353 NW (2d) 832 (Ct. App. 1984).

Felonies which form basis of burglary charges include only offenses against persons and property. *State v. O'Neill*, 121 W (2d) 300, 359 NW (2d) 906 (1984).

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.

See note to 939.72, citing *Dumas v. State*, 90 W (2d) 518, 280 NW (2d) 310 (Ct. App. 1979).

See note to 904.04, citing *Vanlue v. State*, 96 W (2d) 81, 291 NW (2d) 467 (1980).

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 Trespass to land. (1) Whoever does any of the following is subject to a Class B forfeiture:

(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 or she has been notified personally, either orally or in writing, or if the land is posted. Land is considered to be posted under this subsection under either of the following procedures:

(a) If a sign at least 11 inches square is 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 provided in this paragraph 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 provided in this paragraph.

(b) If markings in blaze orange and at least one foot long, including in a contrasting color the phrase "private land" and the name of the owner, are made in at least 2 conspicuous places for every 40 acres to be protected.

(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 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 employee provided such conference is conducted in the living quarters of the employee and with the consent of the employee occupants.

(4m) This section does not apply to any of the following:

(a) A person entering the premises, other than the residence or other buildings or the curtilage of the residence or

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other buildings, of another for the purpose of removing a wild animal as authorized under s. 29.59 (2), (3) or (4).

(b) A hunter entering land that is required to be open for hunting under s. 29.59 (4m) or 29.598 (7m).

(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; 1979 c. 32; 1983 a. 418; 1987 a. 27; 1989 a. 31.

Arrest of abortion protesters trespassing at clinic didn't violate free speech right. *State v. Horn*, 139 W (2d) 473, 407 NW (2d) 854 (1987).

NR 10.07 (8), 1979 Wis. Adm. Code [now NR 10.07 (1) (f)], 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.

943.145 Criminal trespass to a medical facility. (1) In this section, "medical facility" means a hospital under s. 50.33 (2) or a clinic or office that is used by a physician licensed under ch. 448 and that is subject to rules promulgated by the medical examining board for the clinic or office that are in effect on November 20, 1985.

(2) Whoever intentionally enters a medical facility 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 B misdemeanor.

(3) This section does not prohibit any person from participating in lawful conduct in labor disputes under s. 103.53.

History: 1985 a. 56.

Provision is constitutional. *State v. Migliorino*, 150 W (2d) 513, 442 NW (2d) 36 (1989).

943.15 Entry onto a construction site or into a locked building, dwelling or room. (1) Whoever enters the locked or posted construction site or the locked and enclosed building, dwelling or room of another without the consent of the owner or person in lawful possession of the premises is guilty of a Class A misdemeanor.

(2) In this section:

(a) "Construction site" means the site of the construction, alteration, painting or repair of a building, structure or other work.

(b) "Owner or person in lawful possession of the premises" includes a person on whose behalf a building or dwelling is being constructed, altered, painted or repaired and the general contractor or subcontractor engaged in that work.

(c) "Posted" means that 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 on which the construction site is located 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.

History: 1981 c. 68.

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) "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.

(b) "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.

(c) "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.

(d) "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.

(3) **PENALTIES.** Whoever violates sub. (1):

(a) If the value of the property does not exceed \$1,000, is guilty of a Class A misdemeanor.

(b) If the value of the property exceeds \$1,000 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.

(4) USE OF PHOTOGRAPHS AS EVIDENCE. In any action or proceeding for a violation of sub. (1), a party may use duly identified and authenticated photographs of property which was the subject of the violation in lieu of producing the property.

History: 1977 c 173, 255, 447; 1983 a 189; 1987 a 266; 1991 a 39

Cross Reference: Misappropriation of funds by contractor or subcontractor as theft, see 779.02 (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.

State may not charge defendant under (1) (a) in the disjunctive by alleging that defendant took and carried away or used or transferred, etc. *Jackson v. State*, 92 W (2d) 1, 284 NW (2d) 685 (Ct App 1979).

Circumstantial evidence of owner nonconsent was sufficient to support jury's verdict. *State v. Lund*, 99 W (2d) 152, 298 NW (2d) 533 (1980).

See note to Art 1, sec. 16, citing *State v. Roth*, 115 W (2d) 163, 339 NW (2d) 807 (Ct App 1983).

See note to Art 1, sec. 8, citing *State v. Tappa*, 127 W (2d) 155, 378 NW (2d) 883 (1985).

Violation of (1) (d) doesn't require proof that accused personally received property. *State v. O'Neil*, 141 W (2d) 535, 416 NW (2d) 77 (Ct App 1987).

"Obtains title to property", as used in (1) (d), includes obtaining property under a lease by fraudulent misrepresentation. *State v. Meado*, 163 W (2d) 789, 472 NW (2d) 567 (Ct App 1991).

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

State court rulings that unauthorized control was sufficient to support conviction under (1) (d) was not unlawful broadening of offense so as to deprive defendant of notice and opportunity to defend. *Hawkins v. Mathews*, 495 F Supp 323 (1980).

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

(b) "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.

(c) "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.

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

(e) "Trade secret" has the meaning specified in s. 134.90 (1) (c).

(3) Anyone 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; 1983 a 189; 1985 a 236

Insurance agency's customer list was not trade secret. *Corroon & Black v. Hosch*, 109 W (2d) 290, 325 NW (2d) 883 (1982).

Pricing policies, cost markups or amount of company's bid for particular project are not trade secrets. *Wis. Elec. Power Co. v. Public Service Comm.* 110 W (2d) 530, 329 NW (2d) 178 (1983).

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

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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 beverage, food, lodging or other service or accommodation at any campground, hotel, motel, boarding or lodging house, or restaurant, intentionally absconds without paying for it.

(b) While a guest at any campground, hotel, motel, boarding or lodging house, or restaurant, intentionally defrauds the keeper thereof in any transaction arising out of the 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 campground, hotel, motel, boarding or lodging house, or restaurant, in payment of any obligation arising out of the relationship as guest. Those facts also constitute prima facie evidence of an intent to abscond without payment.

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

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

(d) The drawing, endorsing, issuing or delivering to any campground, 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 any beverage, 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 beverage, food, lodging, accommodation or other service is \$1,000 or less.

(b) Is guilty of a Class E felony when the value of any beverage, food, lodging, accommodation or other service exceeds \$1,000.

(4) (a) In addition to the other penalties provided for violation of this section, a judge may order a violator to pay restitution under s. 973.20. A victim may not be compensated under this section and s. 943.212.

(b) This subsection is applicable in actions concerning violations of ordinances in conformity with this section.

(5) A judgment may not be entered for a violation of this section or for a violation of an ordinance adopted in conformity with this section, regarding conduct that was the subject of a judgment including exemplary damages under s. 943.212.

History: 1977 c. 173; 1979 c. 239, 242; 1991 a. 39, 65, 189.

943.212 Fraud on hotel or restaurant keeper; civil liability. (1) Any person who incurs injury to his or her business or property as a result of a violation of s. 943.21 may bring a civil

action against any adult or emancipated minor who caused the loss for all of the following:

(a) The retail value of the beverage, food, lodging, accommodation or service involved in the violation. A person may recover under this paragraph only if he or she exercises due diligence in demanding payment for the beverage, food, lodging, accommodation or service.

(b) Any property damages not covered under par. (a).

(2) In addition to sub. (1), if the person who incurs the injury prevails, the judgment in the action may grant any of the following:

(a) Exemplary damages of not more than 3 times the amount under sub. (1) (a) and (b). No additional proof is required for an award of exemplary damages under this paragraph. Exemplary damages may not be granted for conduct that was the subject of a judgment for violation of s. 943.21 or an ordinance adopted in conformity with that section.

(b) 1. Notwithstanding the limitations of s. 814.04, reasonable attorney fees for actions commenced under ch. 801.

2. Attorneys fees under s. 799.25 for actions commenced under ch. 799.

(3) Notwithstanding sub. (2), the total amount awarded for exemplary damages and attorney fees may not exceed \$300.

(4) At least 20 days prior to commencing an action, as specified in s. 801.02, under this section, the plaintiff shall notify the defendant, by mail, of his or her intent to bring the action and of the acts constituting the basis for the violation of s. 943.21. The plaintiff shall send the notice by regular mail supported by an affidavit of service of mailing or by a certificate of mailing obtained from the U.S. post office from which the mailing was made. The plaintiff shall mail the notice to the defendant's last-known address or to the address provided on the check or order. If the defendant pays the amount due for the beverage, food, lodging, accommodation or service prior to the commencement of the action, he or she is not liable under this section.

(5) The plaintiff has the burden of proving by a preponderance of the evidence that a violation occurred under s. 943.21. A conviction under s. 943.21 is not a condition precedent to bringing an action, obtaining a judgment or collecting that judgment under this section.

(6) A person is not criminally liable under s. 943.30 for any civil action brought in good faith under this section.

(7) Nothing in this section precludes a plaintiff from bringing the action under ch. 799 if the amount claimed is within the jurisdictional limits of s. 799.01 (1) (d).

History: 1991 a. 65.

943.215 Absconding without paying rent. (1) Whoever having obtained the tenancy, as defined in s. 704.01 (4), of residential property he or she is entitled to occupy, intentionally absconds without paying all current and past rent due is guilty of a Class A misdemeanor.

(2) A person has a defense to prosecution under sub. (1) if he or she has provided the landlord with a security deposit that equals or exceeds the amount that the person owes the landlord regarding rent and damage to property.

(3) A person has a defense to prosecution under sub. (1) if, within 5 days after the day he or she vacates the rental premises, he or she pays all current and past rent due or provides to the landlord, in writing, a complete and accurate forwarding address.

(4) When the existence of a defense under sub. (2) or (3) has been placed in issue by the trial evidence, the state must prove beyond a reasonable doubt that the facts constituting the

defense do not exist in order to sustain a finding of guilt under sub. (1).

(5) Subsection (1) does not apply to any tenant against whom a civil judgment has been entered for punitive damages because the tenant left the premises with unpaid rent.

History: 1989 a 336

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

943.225 Refusal to pay for a motor bus ride. (1) In this section, "motor bus" has the meaning specified in s. 340.01 (31).

(2) Whoever intentionally enters a motor bus that transports persons for hire and refuses to pay, without delay, upon demand of the operator or other person in charge of the motor bus, the prescribed transportation fare is subject to a Class E forfeiture.

History: 1987 a 171

943.23 Operating vehicle without owner's consent. (1) In this section:

(a) "Drive" means the exercise of physical control over the speed and direction of a vehicle while it is in motion.

(b) "Major part of a vehicle" means any of the following:

1. The engine.
2. The transmission.
3. Each door allowing entrance to or egress from the passenger compartment.
4. The hood.
5. The grille.
6. Each bumper.
7. Each front fender.
8. The deck lid, tailgate or hatchback.
9. Each rear quarter panel.
10. The trunk floor pan.
11. The frame or, in the case of a unitized body, the supporting structure which serves as the frame.
12. Any part not listed under subs. 1 to 11 which has a value exceeding \$500.

(c) "Operate" includes the physical manipulation or activation of any of the controls of a vehicle necessary to put it in motion.

(2) Whoever intentionally takes and drives any vehicle without the consent of the owner is guilty of a Class D felony.

(3) Whoever intentionally drives or operates any vehicle without the consent of the owner is guilty of a Class E felony.

(4) Whoever violates sub. (2) or (3) and abandons a vehicle without damage within 24 hours is guilty of a Class A misdemeanor.

(5) Whoever intentionally removes a major part of a vehicle without the consent of the owner is guilty of a Class E felony. Whoever intentionally removes any other part or component of a vehicle without the consent of the owner is guilty of a Class A misdemeanor.

(6) (a) In this subsection, "pecuniary loss" has the meaning described in s. 943.245 (1).

(b) In addition to the other penalties provided for violation of this section, a judge may require a violator to pay restitution to or on behalf of a victim regardless of whether the violator is placed on probation under s. 973.09. If restitution is ordered, the court shall consider the financial resources and future ability of the violator to pay and shall determine the method of payment. Upon the application of any interested

party, the court may schedule and hold an evidentiary hearing to determine the value of the victim's pecuniary loss resulting from the offense.

History: 1977 c 173; 1987 a 349; 1989 a 359

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

Leaving vehicle because of threat of imminent arrest is involuntary relinquishment, not abandonment under (2). *State v. Olson*, 106 W (2d) 572, 317 NW (2d) 448 (1982).

943.24 Issue of worthless check. (1) Whoever issues any check or other order for the payment of not more than \$1,000 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 more than \$1,000 or whoever within a 15-day period issues more than one check or other order amounting in the aggregate to more than \$1,000 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.

(5) (a) In addition to the other penalties provided for violation of this section, a judge may order a violator to pay restitution under s. 973.20. A victim may not be compensated under this section and s. 943.245.

(b) In actions concerning violations of ordinances in conformity with this section, a judge may order a violator to make restitution under s. 800.093. A victim may not be compensated under ss. 800.093 and 943.245.

(c) If the court orders restitution under pars. (a) and (b), any amount of restitution paid to the victim under one of those paragraphs reduces the amount the violator must pay in restitution to that victim under the other paragraph.

History: 1977 c 173; 1985 a 179; 1987 a 398; 1991 a 39, 40

Grace period under (3) does not transform issuance of worthless check into debt for which one may not be imprisoned under Art. I, sec. 16. *Locklear v. State*, 86 W (2d) 603, 273 NW (2d) 334 (1979).

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

943.245 Worthless checks; civil liability. (1) In this section, "pecuniary loss" means:

(a) All special damages, but not general damages, including, without limitation because of enumeration, the money equivalent of loss resulting from property taken, destroyed, broken or otherwise harmed and out-of-pocket losses, such as medical expenses; and

(b) Reasonable out-of-pocket expenses incurred by the victim resulting from the filing of charges or cooperating in the investigation and prosecution of the offense under s. 943.24.

(1m) Any person who incurs pecuniary loss, including any holder in due course of a check or order, may bring a civil action against any adult or emancipated minor who:

(a) Issued a check or order in violation of s. 943.24 or sub. (6); and

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(b) Knew, should have known or recklessly disregarded the fact that the check or order was drawn on an account that did not exist, was drawn on an account with insufficient funds or was otherwise worthless.

(2) If the person who incurs the loss prevails, the judgment in the action shall grant monetary relief for all of the following:

(a) The face value of whatever checks or orders were involved.

(b) Any actual damages not covered under par. (a).

(c) 1. Exemplary damages of not more than 3 times the amount under pars. (a) and (b).

2. No additional proof is required for an award of exemplary damages under this paragraph.

(d) Notwithstanding the limitations of s. 799.25 or 814.04, all actual costs of the action, including reasonable attorney fees.

(3) Notwithstanding sub. (2) (c) and (d), the total amount awarded for exemplary damages and reasonable attorney fees may not exceed \$300.

(4) At least 20 days prior to commencing an action, as specified in s. 801.02, under this section, the plaintiff shall notify the defendant, by mail, of his or her intent to bring the action. Notice of nonpayment or dishonor shall be sent by the payee or holder of the check or order to the drawer by regular mail supported by an affidavit of service of mailing or by a certificate of mailing obtained from the U.S. post office from which the mailing was made. The plaintiff shall mail the notice to the defendant's last-known address or to the address provided on the check or order. If the defendant pays the check or order prior to the commencement of the action, he or she is not liable under this section.

(5) The plaintiff has the burden of proving by a preponderance of the evidence that a violation occurred under s. 943.24 or that he or she incurred a pecuniary loss as a result of the circumstances described in sub. (6). A conviction under s. 943.24 is not a condition precedent to bringing an action, obtaining a judgment or collecting that judgment under this section.

(6) (a) In this subsection, "past consideration" does not include work performed, for which a person is entitled to a payroll check.

(b) Whoever issues any check or other order for the payment of money given for a past consideration which, at the time of issuance, the person intends shall not be paid is liable under this section.

(7) A person is not criminally liable under s. 943.30 for any civil action brought in good faith under this section.

(8) Nothing in this section precludes a plaintiff from bringing the action under ch. 799 if the amount claimed is within the jurisdictional limits of s. 799.01 (1) (d).

History: 1985 a. 179; 1987 a. 398; 1989 a. 31.

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.

(5) In prosecutions for violation of sub. (2) arising out of transfers of livestock subject to a security agreement in violation of the terms of the security agreement, evidence that the debtor who transferred the livestock signed or endorsed any writing arising from the transaction, including a check or draft, which states that the transfer of the livestock is permitted by the secured party establishes a rebuttable presumption of intent to defraud.

History: 1977 c. 173; 1979 c. 144.

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.

Sub. (1) is not unconstitutionally vague. Liens were effective as encumbrances on date work was performed or materials supplied. *State v. Lunz*, 86 W (2d) 695, 273 NW (2d) 767 (1979).

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. 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, if the rate is prohibited by a law other than this section, guilty of a Class E felony.

History: 1977 c. 173; 1979 c. 168.

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) Whoever violates sub. (1) by attempting to influence any petit or grand juror, in the performance of his or her functions as such, is guilty of a Class D felony.

(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; 1979 c 110; 1981 c 118.

Commencement of threat need not occur in Wisconsin to support extortion charge venue in Wisconsin county. *State v. Kelly*, 148 W (2d) 774, 436 NW (2d) 883 (Ct. App. 1989).

Claim under this section is governed by six year limitation period under 893.93 (1) (a). *Elbe v. Wausau Hosp. Center*, 606 F Supp. 1491 (1985).

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

Threat to injure manager's reputation unless job is offered violated this section. *State v. Gilkes*, 118 W (2d) 149, 345 NW (2d) 531 (Ct. App. 1984).

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) by use or threat of use of a dangerous weapon or any article used or fashioned in a manner to lead the victim reasonably to believe that it is 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; 1979 c 114.

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 it 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.

Where defendant lost money to dice cheat and soon after recovered similar amount at gunpoint, jury could convict despite defendant's claim that bills recovered were those lost. *Austin v. State*, 86 W (2d) 213, 271 NW (2d) 668 (1978).

Sub (1) states one offense which may be committed by alternate means. Jury was properly instructed in the disjunctive on the force element. *Manson v. State*, 101 W (2d) 413, 304 NW (2d) 729 (1981).

See note to 939.05, citing *State v. Ivey*, 119 W (2d) 591, 350 NW (2d) 622 (1984).

State was not required to prove that accused possessed weapon or dangerous-appearing article in order to convict accused under (2). "Subjective view" of armed robbery adopted. *State v. Hopson*, 122 W (2d) 395, 362 NW (2d) 166 (Ct. App. 1984).

Where robbery is committed while merely possessing dangerous weapon, penalty enhancer under 939.63 can be applied. *State v. Robinson*, 140 W (2d) 673, 412 NW (2d) 535 (Ct. App. 1987).

Victim formed reasonable belief that accused was armed based solely on accused's verbal representations. *State v. Witkowski*, 143 W (2d) 216, 420 NW (2d) 420 (Ct. App. 1988).

943.34 Receiving stolen property. (1) Except as provided under s. 948.62, whoever intentionally receives or conceals stolen property is guilty of:

(a) A Class A misdemeanor, if the value of the property does not exceed \$1,000.

(b) A Class E felony, if the value of the property exceeds \$1,000 but not more than \$2,500.

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

(2) In any action or proceeding for a violation of sub. (1), a party may use duly identified and authenticated photographs of property which was the subject of the violation in lieu of producing the property.

History: 1977 c 173; 1987 a 266, 332; 1991 a 39

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.

943.37 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

"Similar" under (3) means comparable or substantially alike *State v. Hamilton*, 146 W (2d) 426, 432 NW (2d) 108 (Ct. App. 1988)

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

Acceptance or cashing of forged check is not an element of uttering under (2) *Little v. State*, 85 W (2d) 558, 271 NW (2d) 105 (1978).

See note to 943.41, citing *Mack v. State*, 93 W (2d) 287, 286 NW (2d) 563 (1980)

Signed receipts for bogus magazine subscriptions constituted forgery even though defrauded subscriber did not specifically rely on receipt. *State v. Davis*, 105 W (2d) 690, 314 NW (2d) 907 (Ct. App. 1981)

Absence of maker's signature did not immunize accused from crime of uttering forged writing. *State v. Machon*, 112 W (2d) 47, 331 NW (2d) 665 (Ct. App. 1983)

Depositing forged instrument into automated teller machine constitutes "uttering" under (2). *State v. Tolliver*, 149 W (2d) 166, 440 NW (2d) 571 (Ct. App. 1989)

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.

Sub. (2) does not require proof of forgery. *State v. Weister*, 125 W (2d) 54, 370 NW (2d) 278 (Ct. App. 1985).

943.395 Fraudulent insurance and employe benefit program claims. (1) Whoever, knowing it to be false or fraudulent, does any of the following may be penalized as provided in sub. (2):

(a) 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

(b) 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.

(c) 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, or false or fraudulent information which would affect a future claim or benefit application, to be paid under any employe benefit program created by ch. 40.

(d) 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 chs. 600 to 646, for himself or herself or any other person.

(2) Whoever violates this section:

(a) Is guilty of a Class A misdemeanor if the value of the claim or benefit does not exceed \$1,000.

(b) Is guilty of a Class E felony if the value of the claim or benefit exceeds \$1,000.

History: 1971 c. 214; 1975 c. 373, 421; 1977 c. 173; 1979 c. 89; 1981 c. 96; 1987 a. 349; 1991 a. 39.

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 Financial transaction card crimes. (1) DEFINITIONS. In this section:

(a) "Alter" means add information to, change information on or delete information from.

(am) "Automated financial service facility" means a machine activated by a financial transaction card, personal identification code or both.

(b) "Cardholder" means the person to whom or for whose benefit a financial transaction card is issued.

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

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

(em) "Financial transaction card" means an instrument or device issued by an issuer for the use of the cardholder in any of the following:

1. Obtaining anything on credit.
2. Certifying or guaranteeing the availability of funds sufficient to honor a draft or check.
3. Gaining access to an account.

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

(fm) "Personal identification code" means a numeric, alphabetic or alphanumeric code or other means of identification required by an issuer to permit a cardholder's authorized use of a financial transaction card.

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

(h) "Revoked financial transaction card" means a financial transaction 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 financial transaction card.

(3) THEFT BY TAKING CARD. (a) No person shall acquire a financial transaction 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 financial transaction card with intent to use it or sell it or to transfer it to a person other than the issuer. Acquiring a financial transaction card without consent includes obtaining it by conduct defined as statutory theft. If a person has in his possession or under his control financial transaction 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 financial transaction 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 financial transaction 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 financial transaction card. No person shall buy a financial transaction 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 financial transaction card as security for debt.

(e) No person other than the issuer may receive a financial transaction card issued in the name of another person which he or she has reason to know was taken or retained in

violation of this subsection or sub. (2). Either of the following is prima facie evidence of a violation of this paragraph:

1. Possession of 3 or more financial transaction cards with reason to know that the financial transaction cards were taken or retained in violation of this subsection or sub. (2).

2. Possession of a financial transaction card with knowledge that the financial transaction card was taken or retained in violation of this subsection or sub. (2).

(4) FORGERY OF FINANCIAL TRANSACTION 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 financial transaction card or purported financial transaction card or possess a financial transaction card or purported financial transaction card with knowledge that it has been altered or counterfeited. The possession by a person other than the purported issuer of 2 or more financial transaction cards which have been altered or counterfeited is prima facie evidence that the person intended to defraud or that he knew the financial transaction 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 financial transaction card. Possession by a person other than the intended cardholder or one authorized by the intended cardholder of a financial transaction 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 financial transaction card obtained or retained in violation of sub. (3) or a financial transaction 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 financial transaction 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 financial transaction card issued to him or allow another person to use a financial transaction 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.

(c) No person may deposit a stolen or forged instrument by means of an automated financial service facility with knowledge of the character of the instrument.

(d) No person may, with intent to defraud anyone:

1. Introduce information into an electronic funds transfer system.
2. Transmit information to or intercept or alter information from an automated financial service facility.

(e) No person may knowingly receive anything of value from a violation of par. (c) or (d).

(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 financial transaction 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 financial transaction card obtained or retained under circumstances prohibited by sub. (3) or a financial transaction 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 financial transaction 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 financial transaction card with intent to complete it without the consent of the issuer. A financial transaction card is "incomplete" if part of the matter, other than the signature of the cardholder, which an issuer requires to appear on the financial transaction 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.

(6m) FACTORING PROHIBITED. (a) Except as provided in par. (b), a person authorized to furnish money, goods, services or anything else of value upon presentation of a financial transaction card may not deposit, assign, endorse or present for payment to an issuer or to any other person authorized to acquire transaction records for presentation to an issuer a financial transaction card transaction record if the person did not furnish or agree to furnish the money, goods, services or anything else of value represented to be furnished by the transaction record.

(b) Paragraph (a) does not apply to any of the following:

1. A franchisor, as defined in s. 553.03 (6), who presents for payment a financial transaction card transaction record of a franchisee, as defined in s. 553.03 (5), if the franchisor is authorized to present the transaction record on behalf of the franchisee and the franchisee furnished or agreed to furnish the money, goods, services or anything else of value represented to be furnished by the transaction record.

2. A general merchandise retailer who presents for payment a financial transaction card transaction record of a person who furnishes money, goods, services or anything else of value on the business premises of the general merchandise retailer if the general merchandise retailer is authorized to present the transaction record on behalf of the person and the person furnished or agreed to furnish the money, goods, services or anything else of value represented to be furnished by the transaction record.

3. An issuer or an organization of issuers who present a financial transaction card transaction record for the interchange and settlement of the transaction.

(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), (6) (c) or (6m) 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 \$1,000 is guilty of a Class A misdemeanor; if the value of the money, goods, services or property exceeds \$1,000 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; 1981 c. 288; 1989 a. 321; 1991 a. 39

Fraudulent use of credit card need not involve forgery. If forgery is involved, prosecutor has discretion to charge under either this section or 943.38 Mack v. State, 93 W (2d) 287, 286 NW (2d) 563 (1980).

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 \$1,000.

(b) A Class E felony, if the charges for the service obtained, or attempted to be obtained, exceed \$1,000.

(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; 1991 a. 39

943.455 Theft of cellular telephone service. (1) DEFINITIONS. In this section:

(a) "Cellular telephone service" means any telecommunications service provided by a company over a cellular telephone system for payment.

(b) "Company" means a cellular mobile radio telecommunications utility as defined in s. 196.202 (1).

(2) PROHIBITIONS. No person may intentionally do any of the following:

(a) Obtain or attempt to obtain cellular telephone service from a company by trick, artifice, deception, use of an illegal device or other fraudulent means with the intent to deprive that company of any or all lawful compensation for rendering each type of service obtained. The intent required for a violation of this paragraph may be inferred from the presence on the property and in the actual possession of the defendant of a device not authorized by the company, the major purpose of which is to permit reception of cellular telephone services without payment. This inference is rebutted if the defendant demonstrates that he or she purchased that device for a legitimate use or if the company cannot demonstrate that it notified the defendant, by mail using the procedure under sub. (3) (b), that he or she was obtaining or attempting to obtain cellular telephone service by means prohibited in this subsection and that at least 20 days thereafter the device was present on the property and in the actual possession of the defendant.

(b) Give technical assistance or instruction to any person in obtaining or attempting to obtain any cellular telephone service without payment of all lawful compensation to the company providing that service. This paragraph does not apply if the defendant demonstrates that the technical assistance or instruction was given for a legitimate purpose.

(c) Maintain an ability to connect, whether physical, electronic, by radio wave or by other means, with any facilities, components or other devices used for the transmission of cellular telephone services for the purpose of obtaining cellular telephone service without payment of all lawful compensation to the company providing that service. The intent required for a violation of this paragraph may be inferred from proof that the cellular telephone service to the defendant was authorized under a service agreement with the defendant and has been terminated by the company, that the company notified the defendant, by mail using the procedure under sub. (3) (b), of the termination and that at least 20 days thereafter there exists in fact an ability to connect to the company's cellular telephone system at the defendant's property.

(d) Make or maintain any modification or alteration to any device installed with the authorization of a company for the purpose of obtaining any service offered by that company which that person is not authorized by that company to obtain. The intent required for a violation of this paragraph may be inferred from proof that, as a matter of standard procedure, the company places written warning labels on its telecommunications devices explaining that tampering with the device is a violation of law and the device is found to have been tampered with, altered or modified so as to allow the reception of services offered by the company without authority to do so.

(e) Possess without authority any device designed to receive from a company any services offered for sale by that company, whether or not the services are encoded, filtered, scrambled or otherwise made unintelligible, or designed to perform or facilitate the performance of any of the acts under pars. (a) to (d) with the intent that that device be used to receive that company's services without payment. The intent required for a violation of this paragraph may be inferred from proof that the company has mailed to the defendant, using the procedure under sub. (3) (b), a written demand requesting the return of a company-owned device that was in the possession of the defendant at the time of mailing and from proof that the defendant has failed to return or make reasonable arrangements to return the device within 20 days

after the notice has been mailed to the defendant. Intent to violate this paragraph for direct or indirect commercial advantage or private financial gain may be inferred from proof of the existence on the property and in the actual possession of the defendant of a device if the totality of circumstances, including quantities or volumes, indicates possession for resale.

(f) Manufacture, import into this state, distribute, publish, advertise, sell, lease or offer for sale or lease any device or any plan or kit for a device designed to receive cellular telephone services offered for sale by a company, whether or not the services are encoded, filtered, scrambled or otherwise made unintelligible, with the intent that that device, plan or kit be used for obtaining a company's services without payment. The intent required for a violation of this paragraph may be inferred from proof that the defendant has sold, leased or offered for sale or lease any device, plan or kit for a device in violation of this paragraph and during the course of the transaction for sale or lease the defendant expressly states or implies to the buyer that the product will enable the buyer to obtain cellular telephone service without charge.

(3) CIVIL ACTIONS. (a) Any person who incurs injury because of conduct described in sub. (2) may bring a civil action under s. 801.02. At least 20 days before commencing an action, as specified in s. 801.02, under this subsection, the plaintiff shall notify the defendant, by mail using the procedure under par. (b), of his or her intent to bring the action. The notice shall include an explanation of the provisions of par. (c) and a statement explaining that if the defendant pays the actual damages sought by the plaintiff before the commencement of the action, the defendant may not be sued for damages under this subsection.

(b) Notice shall be sent by regular mail supported by an affidavit of service of mailing or by a certificate of mailing obtained from the U.S. post office from which the mailing was made. The plaintiff shall mail the notice to the defendant's last-known address.

(c) If the defendant is entitled to costs under s. 814.03 (1), the defendant shall recover as costs the greater of the following:

1. Costs computed under s. 814.03.
2. All reasonable costs of litigation before any appeal.

(4) PENALTIES. The following penalties apply for violations of this section:

(a) Except as provided in pars. (b) to (d), any person who violates sub. (2) (a) to (e) is subject to a Class C forfeiture.

(b) Except as provided in pars. (c) and (d), any person who violates sub. (2) (a) to (e) as a 2nd or subsequent offense is guilty of a Class B misdemeanor.

(c) Except as provided in par. (d), any person who violates sub. (2) (a) to (f) for direct or indirect commercial advantage or private financial gain is guilty of a Class E felony.

(d) Any person who violates sub. (2) (a) to (f) for direct or indirect commercial advantage or private financial gain as a 2nd or subsequent offense is guilty of a Class D felony.

(5) EXCEPTION. This section does not affect the use by a person of cellular telephone services if the services have been paid for.

History: 1991 a. 39

943.46 Theft of cable television service. (1) DEFINITIONS. In this section:

(a) "Cable television service" means any audio, video or data service provided by a cable television company over its cable system facilities for payment. "Cable television service" does not include signals received by privately owned antennas that are not connected to a cable television system whether or

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not the same signals are provided by a cable television company.

(b) "Private financial gain" does not include the gain resulting to any individual from the private use in that individual's dwelling unit of any programming for which the individual has not obtained authorization.

(2) PROHIBITIONS. No person may intentionally do any of the following:

(a) Obtain or attempt to obtain cable television service from a company by trick, artifice, deception, use of an illegal device or illegal decoder or other fraudulent means with the intent to deprive that company of any or all lawful compensation for rendering each type of service obtained. The intent required for a violation of this paragraph may be inferred from the presence on the property and in the actual possession of the defendant of a device not authorized by the cable television company, the major purpose of which is to permit reception of cable television services without payment. This inference is rebutted if the defendant demonstrates that he or she purchased that device for a legitimate use or if the cable television company cannot demonstrate that it notified the defendant, by mail using the procedure under sub. (3) (b), that he or she was obtaining or attempting to obtain cable television service by means prohibited in this subsection and that at least 20 days thereafter the device was present on the property and in the actual possession of the defendant.

(b) Give technical assistance or instruction to any person in obtaining or attempting to obtain any cable television service without payment of all lawful compensation to the company providing that service. This paragraph does not apply if the defendant demonstrates that the technical assistance or instruction was given or the installation of the connection, descrambler or receiving device was for a legitimate use.

(c) Make or maintain a connection, whether physical, electrical, mechanical, acoustical or by other means, with any cables, wires, components or other devices used for the distribution of cable television services for the purpose of distributing cable television service to any other dwelling unit without authority from a cable television company.

(d) Make or maintain a connection, whether physical, electrical, mechanical, acoustical or by other means, with any cables, wires, components or other devices used for the distribution of cable television services for the purpose of obtaining cable television service without payment of all lawful compensation to the company providing that service. The intent required for a violation of this paragraph may be inferred from proof that the cable service to the defendant's residence or business was connected under a service agreement with the defendant and has been disconnected by the cable television company, that the cable television company notified the defendant, by mail using the procedure under sub. (3) (b), of the disconnect and that at least 20 days thereafter there exists in fact a connection to the cable system at the defendant's residence or business.

(e) Make or maintain any modification or alteration to any device installed with the authorization of a cable television company for the purpose of intercepting or receiving any program or other service carried by that company which that person is not authorized by that company to receive. The intent required for a violation of this paragraph may be inferred from proof that, as a matter of standard procedure, the cable television company places written warning labels on its converters or decoders explaining that tampering with the device is a violation of law and the converter or decoder is found to have been tampered with, altered or modified so as to allow the reception or interception of programming carried by the cable television company without authority to do

so. The trier of fact may also infer that a converter or decoder has been altered or modified from proof that the cable television company, as a matter of standard procedure, seals the converters or decoders with a label or mechanical device, that the seal was shown to the customer upon delivery of the decoder and that the seal has been removed or broken. The inferences under this paragraph are rebutted if the cable television company cannot demonstrate that the intact seal was shown to the customer.

(f) Possess without authority any device or printed circuit board designed to receive from a cable television system any cable television programming or services offered for sale over that cable television system, whether or not the programming or services are encoded, filtered, scrambled or otherwise made unintelligible, or perform or facilitate the performance of any of the acts under pars. (a) to (e) with the intent that that device or printed circuit be used to receive that cable television company's services without payment. The intent required for a violation of this paragraph may be inferred from proof that the cable television company has mailed to the defendant, using the procedure under sub. (3) (b), a written demand requesting the return of a company-owned converter, decoder or other device that was in the possession of the defendant at the time of mailing and from proof that the defendant has failed to return or make reasonable arrangements to return the converter, decoder or other device within 20 days after the notice has been mailed to the defendant. Intent to violate this paragraph for direct or indirect commercial advantage or private financial gain may be inferred from proof of the existence on the property and in the actual possession of the defendant of a device if the totality of circumstances, including quantities or volumes, indicates possession for resale.

(g) Manufacture, import into this state, distribute, publish, advertise, sell, lease or offer for sale or lease any device, printed circuit board or any plan or kit for a device or for a printed circuit designed to receive the cable television programming or services offered for sale over a cable television system from a cable television system, whether or not the programming or services are encoded, filtered, scrambled or otherwise made unintelligible, with the intent that that device, printed circuit, plan or kit be used for the reception of that company's services without payment. The intent required for a violation of this paragraph may be inferred from proof that the defendant has sold, leased or offered for sale or lease any device, printed circuit board, plan or kit for a device or for a printed circuit board in violation of this paragraph and during the course of the transaction for sale or lease the defendant expressly states or implies to the buyer that the product will enable the buyer to obtain cable television service without charge.

(3) CIVIL ACTIONS. (a) Any person who incurs injury because of conduct described in sub. (2) may bring a civil action under s. 801.02. At least 20 days prior to commencing an action, as specified in s. 801.02, under this subsection, the plaintiff shall notify the defendant, by mail using the procedure under par. (b), of his or her intent to bring the action. The notice shall include an explanation of the provisions of par. (c) and a statement explaining that if the defendant pays the actual damages sought by the plaintiff prior to the commencement of the action, the defendant may not be sued for damages under this subsection.

(b) Notice shall be sent by regular mail supported by an affidavit of service of mailing or by a certificate of mailing obtained from the U.S. post office from which the mailing was made. The plaintiff shall mail the notice to the defendant's last-known address.

(c) If the defendant is entitled to costs under s. 814.03 (1), the defendant shall recover as costs the greater of the following:

1. Costs computed under s. 814.03.
2. All reasonable costs of litigation prior to any appeal.

(4) **PENALTIES.** The following penalties apply for violations of this section:

(a) Except as provided in pars. (b) to (d), any person who violates sub. (2) (a) to (f) is subject to a Class C forfeiture.

(b) Except as provided in pars. (c) and (d), any person who violates sub. (2) (a) to (f) as a 2nd or subsequent offense is guilty of a Class B misdemeanor.

(c) Except as provided in par. (d), any person who violates sub. (2) (a) to (g) for direct or indirect commercial advantage or private financial gain is guilty of a Class E felony.

(d) Any person who violates sub. (2) (a) to (g) for direct or indirect commercial advantage or private financial gain as a 2nd or subsequent offense is guilty of a Class D felony.

(5) **EXCEPTION.** This section does not affect the use by a person of cable television services if the services have been paid for and the use is exclusive to the person's dwelling unit. This subsection does not prohibit a board or council of any city, village or town from specifying the number and manner of installation of outlets used by any such person for cable television services and does not prohibit a cable television company, in any written contract with a subscriber, from requiring the company's approval for any increase in the number of those outlets used.

History: 1987 a. 345

943.47 Theft of satellite cable programming. (1) DEFINITIONS. In this section:

(a) "Encrypt", when used with respect to satellite cable programming, means to transmit that programming in a form whereby the aural or visual characteristics or both are altered to prevent the unauthorized reception of that programming by persons without authorized equipment which is designed to eliminate the effects of that alteration.

(b) "Satellite cable programming" means encrypted video programming which is transmitted via satellite for direct reception by satellite dish owners for a fee.

(2) **PROHIBITIONS.** No person may decode encrypted satellite cable programming without authority.

(3) **CRIMINAL PENALTIES.** The following penalties apply for violations of this section:

(a) Except as provided in par. (b), any person who intentionally violates sub. (2) is guilty of a Class B misdemeanor.

(b) Any person who intentionally violates sub. (2) and for direct or indirect commercial advantage or private financial gain is guilty of a Class E felony for a first offense and is guilty of a Class D felony for a 2nd or subsequent offense.

(4) **CIVIL ACTIONS.** (a) Any person who incurs injury because of conduct described in sub. (2) may bring a civil action under s. 801.02. At least 20 days prior to commencing an action, as specified in s. 801.02, under this subsection, the plaintiff shall notify the defendant, by mail, of his or her intent to bring the action. The notice shall include an explanation of the provisions of par. (b) and a statement explaining that if the defendant pays the actual damages sought by the plaintiff prior to the commencement of the action, the defendant may not be sued for damages under this subsection. Notice shall be sent by regular mail supported by an affidavit of service of mailing or by a certificate of mailing obtained from the U.S. post office from which the mailing was made. The plaintiff shall mail the notice to the defendant's last-known address.

(b) If the defendant is entitled to costs under s. 814.03 (1), the defendant shall recover as costs the greater of the following:

1. Costs computed under s. 814.03.
2. All reasonable costs of litigation prior to any appeal.

(5) **EXCEPTION.** This section does not affect the use by a person of satellite cable programming if the programming has been paid for and the use is exclusive to the person's dwelling unit.

History: 1987 a. 345

943.50 Retail theft. (1) In this section:

(a) "Merchant" includes any "merchant" as defined in s. 402.104 (3) or any innkeeper, motelkeeper or hotelkeeper.

(b) "Value of merchandise" means:

1. For property of the merchant, the value of the property; or

2. For merchandise held for resale, the merchant's stated price of the merchandise or, in the event of altering, transferring or removing a price marking or causing a cash register or other sales device to reflect less than the merchant's stated price, the difference between the merchant's stated price of the merchandise and the altered price.

(1m) 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 or property of the merchant without his or her consent and with intent to deprive the merchant permanently of possession, or the full purchase price, of the 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 or her presence may detain the person in a reasonable manner for a reasonable length of time to deliver the person to a peace officer, or to his or her 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 or she shall not be interrogated or searched against his or her will before the arrival of a peace officer who may conduct a lawful interrogation of the accused person. Any merchant or merchant's adult employe who acts in good faith in any act authorized under this section is immune from civil or criminal liability for those acts.

(3m) (a) In any action or proceeding for violation of this section, duly identified and authenticated photographs of merchandise which was the subject of the violation may be used as evidence in lieu of producing the merchandise.

(b) A merchant or merchant's adult employe is privileged to defend property as prescribed in s. 939.49.

(4) Whoever violates this section is guilty of:

(a) A Class A misdemeanor, if the value of the merchandise does not exceed \$1,000.

(b) A Class E felony, if the value of the merchandise exceeds \$1,000 but not \$2,500.

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

943.50 CRIMES—PROPERTY

(5) (a) In addition to the other penalties provided for violation of this section, a judge may order a violator to pay restitution under s. 973.20. A victim may not be compensated under this section and s. 943.51.

(b) In actions concerning violations of ordinances in conformity with this section, a judge may order a violator to make restitution under s. 800.093. A victim may not be compensated under ss. 800.093 and 943.51.

(c) If the court orders restitution under pars. (a) and (b), any amount of restitution paid to the victim under one of those paragraphs reduces the amount the violator must pay in restitution to that victim under the other paragraph.

History: 1977 c. 173; 1981 c. 270; 1983 a. 189 s. 329 (24); 1985 a. 179; 1987 a. 398; 1991 a. 39, 40.

Merchant acted reasonably in detaining innocent shopper for 20 minutes and releasing her without summoning police. *Johnson v. K-Mart Enterprises, Inc.* 98 W (2d) 533, 297 NW (2d) 74 (Ct. App. 1980).

"Reasonable manner" of detainment under (3) construed. *Hainz v. Shopko Stores, Inc.* 121 W (2d) 168, 359 NW (2d) 397 (Ct. App. 1984).

Sub. (3) requires only that merchant's employee have probable cause to believe that person violated this section in employee's presence; actual theft need not be committed in employee's presence. *State v. Lee*, 157 W (2d) 126, 458 NW (2d) 562 (Ct. App. 1990).

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

943.51 Retail theft; civil liability. (1) Any person who incurs injury to his or her business or property as a result of a violation of s. 943.50 may bring a civil action against any adult or emancipated minor who caused the loss for all of the following:

(a) The retail value of the merchandise unless it is returned undamaged and unused. A person may recover under this paragraph only if he or she exercises due diligence in demanding the return of the merchandise immediately after he or she discovers the loss and the identity of the person who has the merchandise.

(b) Any actual damages not covered under par. (a).

(2) In addition to sub. (1), if the person who incurs the loss prevails, the judgment in the action may grant any of the following:

(a) 1. Exemplary damages of not more than 3 times the amount under sub. (1) (a) and (b).

2. No additional proof is required for an award of exemplary damages under this paragraph.

(b) Notwithstanding the limitations of s. 799.25 or 814.04, all actual costs of the action, including reasonable attorney fees.

(3) Notwithstanding sub. (2), the total amount awarded for exemplary damages and reasonable attorney fees may not exceed \$300.

(4) The plaintiff has the burden of proving by a preponderance of the evidence that a violation occurred under s. 943.50. A conviction under s. 943.50 is not a condition precedent to bringing an action, obtaining a judgment or collecting that judgment under this section.

(5) A person is not criminally liable under s. 943.30 for any civil action brought in good faith under this section.

(6) Nothing in this section precludes a plaintiff from bringing the action under ch. 799 if the amount claimed is within the jurisdictional limits of s. 799.01 (1) (d).

History: 1985 a. 179; 1989 a. 31.

Employee salary for time spent processing retail theft is compensable as "actual damages" under (1) (b). *Shopko Stores, Inc. v. Kujak*, 147 W (2d) 589, 433 NW (2d) 618 (Ct. App. 1988).

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 perma-

nently of possession of such property shall forfeit an amount not to exceed \$50.

History: 1977 c. 99

943.60 Criminal slander of title. (1) Any person who submits for filing, docketing or recording any lien, claim of lien, lis pendens, writ of attachment or any other instrument relating to title in real or personal property, knowing the contents or any part of the contents to be false, sham or frivolous, is guilty of a Class E felony.

(2) This section applies to any person who causes another person to act in the manner specified in sub. (1).

(3) This section does not apply to a register of deeds or other government employe who acts in the course of his or her official duties and files, dockets or records any instrument relating to title on behalf of another person.

History: 1979 c. 221.

Question whether document is frivolous was for jury to answer. *State v. Leist*, 141 W (2d) 34, 414 NW (2d) 45 (Ct. App. 1987).

943.61 Theft of library material. (1) In this section:

(a) "Archives" means a place in which public or institutional records are systematically preserved.

(b) "Library" means any public library; library of an educational, historical or eleemosynary institution, organization or society; archives; or museum.

(c) "Library material" includes any book, plate, picture, photograph, engraving, painting, drawing, map, newspaper, magazine, pamphlet, broadside, manuscript, document, letter, public record, microform, sound recording, audiovisual materials in any format, magnetic or other tapes, electronic data processing records, artifacts or other documentary, written or printed materials, regardless of physical form or characteristics, belonging to, on loan to or otherwise in the custody of a library.

(2) Whoever intentionally takes and carries away, transfers, conceals or retains possession of any library material without the consent of a library official, agent or employe and with intent to deprive the library of possession of the material may be penalized as provided in sub. (5).

(3) The concealment of library material beyond the last station for borrowing library material in a library is evidence of intent to deprive the library of possession of the material. The discovery of library material which has not been borrowed in accordance with the library's procedures or taken with consent of a library official, agent or employe and which is concealed upon the person or among the belongings of the 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 the material.

(4) An official or adult employe or agent of a library who has probable cause for believing that a person has violated this section in his or her presence may detain the person in a reasonable manner for a reasonable length of time to deliver the person to a peace officer, or to the person's parent or guardian in the case of a minor. The detained person shall be promptly informed of the purpose for the detention and be permitted to make phone calls, but shall not be interrogated or searched against his or her will before the arrival of a peace officer who may conduct a lawful interrogation of the accused person. Compliance with this subsection entitles the official, agent or 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.

(5) Whoever violates this section is guilty of:

(a) A Class A misdemeanor, if the value of the library materials does not exceed \$1,000.

(b) A Class E felony, if the value of the library materials exceeds \$1,000 but not \$2,500.

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

History: 1979 c. 245; Stats 1979 s. 943.60; 1979 c. 355 s. 232; Stats 1979 s. 943.61; 1991 a. 39.

943.62 Unlawful receipt of payments to obtain loan for another. (1) In this section, "escrow agent" means a state or federally chartered bank, savings bank, savings and loan association or credit union located in this state.

(2) Except as provided in sub. (2m), no person may receive a payment from a customer as an advance fee, salary, deposit or money for the purpose of obtaining a loan or a lease of personal property for the customer unless the payment is immediately placed in escrow subject to the condition that the escrow agent shall deliver the payment to the person only upon satisfactory proof of the closing of the loan or execution of the lease within a period of time agreed upon in writing between the person and the customer; otherwise the payment shall be returned to the customer immediately upon expiration of the time period.

(2m) This section does not apply to a savings and loan association, credit union, bank, savings bank, or a mortgage banker, loan originator or loan solicitor registered under s. 440.72.

(3) (a) Advance payments to cover reasonably estimated costs are excluded from the requirements of sub. (2) if the customer first signs a written agreement which recites in capital and lowercase letters of not less than 12-point bold-face type all of the following:

1. The estimated costs by item.
2. The estimated total costs.
3. Money advanced for incurred costs will not be refunded.

(b) If a cost under par. (a) is not incurred, the person shall refund that amount to the customer.

(4) Whoever violates this section is guilty of:

(a) A Class A misdemeanor, if the value of the advance payment or required refund, as applicable, does not exceed \$500.

(b) A Class E felony, if the value of the advance payment or required refund, as applicable, exceeds \$500 but does not exceed \$2,500.

(c) A Class C felony, if the value of the advance payment or required refund, as applicable, exceeds \$2,500.

History: 1981 c. 20; 1983 a. 167; 1987 a. 359; 1987 a. 403 s. 256.

943.70 Computer crimes. (1) **DEFINITIONS.** In this section:

(a) "Computer" means an electronic device that performs logical, arithmetic and memory functions by manipulating electronic or magnetic impulses, and includes all input, output, processing, storage, computer software and communication facilities that are connected or related to a computer in a computer system or computer network.

(b) "Computer network" means the interconnection of communication lines with a computer through remote terminals or a complex consisting of 2 or more interconnected computers.

(c) "Computer program" means an ordered set of instructions or statements that, when executed by a computer, causes the computer to process data.

(d) "Computer software" means a set of computer programs, procedures or associated documentation used in the operation of a computer system.

(dm) "Computer supplies" means punchcards, paper tape, magnetic tape, disk packs, diskettes and computer output, including paper and microform.

(e) "Computer system" means a set of related computer equipment, hardware or software.

(f) "Data" means a representation of information, knowledge, facts, concepts or instructions that has been prepared or is being prepared in a formalized manner and has been processed, is being processed or is intended to be processed in a computer system or computer network. Data may be in any form including computer printouts, magnetic storage media, punched cards and as stored in the memory of the computer. Data are property.

(g) "Financial instrument" includes any check, draft, warrant, money order, note, certificate of deposit, letter of credit, bill of exchange, credit or credit card, transaction authorization mechanism, marketable security and any computer representation of them.

(h) "Property" means anything of value, including but not limited to financial instruments, information, electronically produced data, computer software and computer programs.

(i) "Supporting documentation" means all documentation used in the computer system in the construction, clarification, implementation, use or modification of the software or data.

(2) **OFFENSES AGAINST COMPUTER DATA AND PROGRAMS.** (a) Whoever wilfully, knowingly and without authorization does any of the following may be penalized as provided in par. (b):

1. Modifies data, computer programs or supporting documentation.
2. Destroys data, computer programs or supporting documentation.
3. Accesses data, computer programs or supporting documentation.
4. Takes possession of data, computer programs or supporting documentation.
5. Copies data, computer programs or supporting documentation.
6. Discloses restricted access codes or other restricted access information to unauthorized persons.

(b) Whoever violates this subsection is guilty of:

1. A Class A misdemeanor unless subd. 2, 3 or 4 applies.
2. A Class E felony if the offense is committed to defraud or to obtain property.
3. A Class D felony if the damage is greater than \$2,500 or if it causes an interruption or impairment of governmental operations or public communication, of transportation or of a supply of water, gas or other public service.

4. A Class C felony if the offense creates a substantial and unreasonable risk of death or great bodily harm to another.

(3) **OFFENSES AGAINST COMPUTERS, COMPUTER EQUIPMENT OR SUPPLIES.** (a) Whoever wilfully, knowingly and without authorization does any of the following may be penalized as provided in par. (b):

1. Modifies computer equipment or supplies that are used or intended to be used in a computer, computer system or computer network.
2. Destroys, uses, takes or damages a computer, computer system, computer network or equipment or supplies used or intended to be used in a computer, computer system or computer network.

(b) Whoever violates this subsection is guilty of:

1. A Class A misdemeanor unless subd. 2, 3 or 4 applies.
2. A Class E felony if the offense is committed to defraud or obtain property.
3. A Class D felony if the damage to the computer, computer system, computer network, equipment or supplies is greater than \$2,500.

4. A Class C felony if the offense creates a substantial and unreasonable risk of death or great bodily harm to another.

(4) **COMPUTER USE RESTRICTION.** In addition to the other penalties provided for violation of this section, a judge may place restrictions on the offender's use of computers. The duration of any such restrictions may not exceed the maximum period for which the offender could have been imprisoned; except if the offense is punishable by forfeiture, the duration of the restrictions may not exceed 90 days.

(5) **INJUNCTIVE RELIEF.** Any aggrieved party may sue for injunctive relief under ch. 813 to compel compliance with this section. In addition, owners, lessors, users or manufacturers of computers, or associations or organizations representing any of those persons, may sue for injunctive relief to prevent or stop the disclosure of information which may enable another person to gain unauthorized access to data, computer programs or supporting documentation.

History: 1981 c. 293; 1983 a. 438, 541; 1987 a. 399.

Judicial Council Note, 1988: [In (2) (b) 4. and (3) (b) 4.] The words "substantial risk" are substituted for "high probability" to avoid any inference that a statistical likelihood greater than 50% was ever intended. [Bill 191-S]

Criminal liability for computer offenses and the new Wisconsin computer crimes act. Levy. WBB March 1983.

943.75 Unauthorized release of animals. (1) In this section:

(a) "Humane officer" means an officer appointed under s. 58.07.

(b) "Local health officer" has the meaning given in s. 143.01 (1m).

(2) Whoever intentionally releases an animal that is lawfully confined for scientific, farming, companionship or protection of persons or property, recreation, restocking, research, exhibition, commercial or educational purposes, acting without the consent of the owner or custodian of the animal, is guilty of a Class C misdemeanor. A 2nd violation of this section by a person is a Class A misdemeanor. A 3rd or subsequent violation of this section by a person is a Class E felony.

(3) Subsection (2) does not apply to any humane officer, local health officer, peace officer, employe of the department of natural resources while on any land licensed under s. 29.52, 29.573, 29.574, 29.575, 29.578 or 29.58 or designated as a wildlife refuge under s. 29.57 (1) or employe of the department of agriculture, trade and consumer protection if the officer's or employe's acts are in good faith and in an apparently authorized and reasonable fulfillment of his or her duties. This subsection does not limit any other person from claiming the defense of privilege under s. 939.45 (3).

(4) When the existence of an exception under sub. (3) has been placed in issue by the trial evidence, the state must prove beyond a reasonable doubt that the facts constituting the exception do not exist in order to sustain a finding of guilt under sub. (2).

History: 1991 a. 20, 269