CHAPTER 940

CRIMES AGAINST LIFE AND BODILY SECURITY

LIFE.

940.01 First-degree murder. (1) Whoever causes the death of another human being with intent to kill that person or another is guilty of a Class A felony.

(2) In this chapter "intent to kill" means the mental purpose to take the life of another human being.

History: 1977 c. 173.

Conviction of 1st degree murder upheld where, in the course of a robbery, defendant severely and repeatedly hit the victim with a heavy bottle. State v. Wells, 51 W (2d) 477, 187 NW (2d) 328.

Evidence sufficiently supported defendant's conviction of first-degree murder (party to a crime) under proof that the victim was murdered by another with a weapon and ammunition supplied by defendant, who prior thereto, knowing his accomplice was looking for the victim and intended to kill him, not only furnished the murder weapon and demonstrated its use, but supplied his confederate with gasoline money for a car into which defendant, under pretext, lured the victim, and after the murder, defendant caused the weapon to be thrown into a lake in an attempt to hide his involvement. Clark v. State, 62 W (2d) 194, 214 NW (2d) 450.

Evidence warranted the jury in reasonably concluding defendant possessed the requisite intent to kill, contrary to his claim of intoxication based on his prior ingestion of liquor, the record disclosing he later, accompanied by a friend, knocked at the door of the victim's dwelling, and after a short conversation between the two, lunged at the door, pulled it open and fired his gun point-blank at the victim's head, his sobriety being further made manifest by his verbal recognition of his culpable plight and the manner in which he immediately thereafter maneuvered his car when he drove away. State v. Nemoir, 62 W (2d) 206, 214 NW (2d) 297.

Defendant's denial of intent to kill is refuted by the record establishing that after beating his victim about the head with the butt of his gun, defendant almost fatally injured the victim by firing a shot into her abdomen at almost point-blank range. Fells v. State, 65 W (2d) 525, 223 NW (2d) 507.

Trial court omission to instruct on intoxication cannot be urged on appeal to invalidate defendant's 1st-degree murder conviction, absent any request for an instruction on that defense or objections to the instructions given. Lee v. State, 65 W (2d) 648, 223 NW (2d) 455.

Where a person discharges a weapon at a vital body part and death ensues as a natural and probable result, a rebuttable presumption arises that he intended to take a human life, the burden of rebutting which is upon the defendant to bring forth evidence raising a reasonable doubt as to his intention to take life or as to whether such taking was justifiable or excusable. Smith v. State, 69 W (2d) 297, 230 NW (2d) 858.

Person convicted under this section is eligible for probation. State v. Wilson, 77 W (2d) 15, 252 NW (2d) 64.

Conviction of 1st degree murder was upheld where defendant's confession was corroborated by independent evidence in the record, including the defendant's own testimony. Schultz v. State, 82 W (2d) 737, 264 NW (2d) 245.

Psychiatric testimony which purports to prove or disprove specific intent is inadmissible during guilt phase of bifurcated trial. Court doubts whether such testimony is competent, relevant or probative in any criminal case. Steele v. State, 97 W (2d) 72, 294 NW (2d) 2 (1980).

See note to 907.02, citing State v. Dalton, 98 W (2d) 725, 298 NW (2d) 398 (Ct. App. 1980).

Trial court erred in refusing to submit verdict of endangering safety as lesser included offense on attempted murder charge where defendant admitted shooting victim in stomach but claimed self-defense. State v. Cartagena, 99 W (2d) 657, 299 NW (2d) 872 (1981).

See note to 903.03, citing State v. Schulz, 102 W (2d) 423, 307 NW (2d) 151 (1981).

See note to 939.05, citing State v. Stanton, 106 W (2d) 172, 316 NW (2d) 134 (Ct. App. 1982).

See note to 903.03, citing Barrera v. State, 109 W (2d) 324, 325 NW (2d) 722 (1982).

Defense of voluntary intoxication discussed. State v. Strege, 116 W (2d) 477, 343 NW (2d) 100 (1984).

Psychiatric opinion evidence on capacity to form intent is admissible if based solely on defendant's voluntary intoxication; psychiatric opinion based in part on defendant's mental health history was properly excluded in guilt phase of trial. State v. Repp, 122 W (2d) 246, 362 NW (2d) 415 (1985).

Where jury was instructed that persons are presumed to intend probable consequences of acts and where defendant was precluded from offering psychiatric testimony as to inability to form intent required for first-degree murder, prosecution was unconstitutionally relieved of proving intent element of crime. Hughes v. Mathews, 576 F (2d) 1250 (1978).

Modernizing Wisconsin's homicide statutes. Dickey and Fullin. WBB Jan. 1984.

Evidence of diminished capacity inadmissible to show lack of intent. 1976 WLR 623.

Beck v. Alabama: The right to a lesser included offense instruction in capital cases. 1981 WLR 560.

Restricting the admission of psychiatric testimony on a defendant's mental state: Wisconsin's Steele curtain. 1981 WLR 733.

940.02 Second-degree murder. Whoever causes the death of another human being under either of the following circumstances is guilty of a Class B felony:

(1) By conduct imminently dangerous to another and evincing a depraved mind, regardless of human life; or

(2) As a natural and probable consequence of the commission of or attempt to commit a felony.

History: 1977 c. 173.

As to 2nd degree murder the reference is to conduct evincing a certain state of mind, not that the state of mind actually exists. Ameen v. State, 51 W (2d) 175, 186 NW (2d) 206.

See note to 940.01, citing State v. Wells, 51 W (2d) 477, 187 NW (2d) 328.

Trial court refusal to give defendant's requested definition of the depraved mind necessary for second-degree murder as defined by the supreme court in State v. Weso, 60 W (2d) 404, did not constitute an abuse of discretion where Weso neither changed the law with respect to this element of the crime nor held that the standard instruction thereon was either unclear or inadequate. Hughes v. State, 68 W (2d) 159, 227 NW (2d) 911.

Beating and kicking smaller, unconscious victim constitutes conduct imminently dangerous and evincing a depraved mind. Wangerin v. State, 73 W (2d) 427, 243 NW (2d) 448.

Where victim, known by defendant to be violent, attacked defendant with a knife and defendant shot victim 5 times, allegedly by accident, trial court did not err in instructing jury on lesser charge of second-degree murder on grounds that defendant did not intend victim's death. McAllister v. State, 74 W (2d) 246, 246 NW (2d) 511.

Sexual molestation of nine year old girl resulting in fatal traumatic shock constituted conduct presenting an apparent and conscious danger of producing death. Turner v. State, 76 W (2d) 1, 250 NW (2d) 706.

Where defendant was drag racing along street while intoxicated but apparently swerved in attempt to avoid hitting victim, the proof was insufficient in respect to conduct imminently dangerous to another. Wagner v. State, 76 W (2d) 30, 250 NW (2d) 331.

See note to 940.05, citing State v. Klimas, 94 W (2d) 288, 288 NW (2d) 157 (Ct. App. 1979).

Essential difference between 1st and 2nd degree murder is intent to kill. Provocation will not reduce 1st degree murder to 2nd degree murder. State v. Lee, 108 W (2d) 1, 321 NW (2d) 108 (1982).

See note to Art. I, sec. 8, citing State v. Gordon, 111 W (2d) 133, 330 NW (2d) 564 (1983).

For conviction under (2), act causing death must be inherently dangerous to life. State v. Noren, 125 W (2d) 204, 371 NW (2d) 381 (Ct. App. 1985).

Where defendant is found guilty of homicide occurring during commission of a felony he may be sentenced for both offenses although separate verdicts were not submitted. Patelski v. Cady, 313 F Supp. 1268.

940.04 Abortion. (1) Any person, other than the mother, who intentionally destroys the life of an unborn child may be fined not more than $5,000 or imprisoned not more than 3 years or both.

(2) Any person, other than the mother, who does either of the following may be imprisoned not more than 15 years:

(a) Intentionally destroys the life of an unborn quick child; or

(b) Causes the death of the mother by an act done with intent to destroy the life of an unborn child. It is unnecessary to prove that the fetus was alive when the act so causing the mother's death was committed.

(3) Any pregnant woman who intentionally destroys the life of her unborn child or who consents to such destruction by another may be fined not more than $200 or imprisoned not more than 6 months or both.

(4) Any pregnant woman who intentionally destroys the life of her unborn quick child or who consents to such destruction by another may be imprisoned not more than 2 years.

(5) This section does not apply to a therapeutic abortion which:

(a) Is performed by a physician; and

(b) Is necessary, or is advised by 2 other physicians as necessary, to save the life of the mother; and

(c) Unless an emergency prevents, is performed in a licensed maternity hospital.

(6) In this section "unborn child" means a human being from the time of conception until it is born alive.

Aborting child against father's wishes does not constitute intentional infliction of emotional distress. Przybyla v. Przybyla, 87 W (2d) 441, 275 NW (2d) 112 (Ct. App. 1978).

This section cited as similar to Texas statute which was held to violate the due process clause of the 14th amendment, which protects against state action the right to privacy, including a woman's qualified right to terminate her pregnancy. Roe v. Wade, 410 US 113.

State may prohibit first trimester abortions by nonphysicians. Connecticut v. Menillo, 423 US 9.

Viability of unborn child discussed. Colautti v. Franklin, 439 US 379 (1979).

Any law requiring parental consent for minor to obtain abortion must ensure that parent does not have absolute, and possibly arbitrary, veto. Bellotti v. Baird, 443 US 622 (1979).

See note to art. I, sec. 1, citing Harris v. McRae, 448 US 297 (1980).

Abortion issues discussed. Akron v. Akron Center for Reproductive Health, 462 US 416 (1983).

Abortion issues discussed. Planned Parenthood Assn. v. Ashcraft, 462 US 476 (1983).

Abortion issues discussed. Simopoulas v. Virginia, 462 US 506 (1983).

See note to art. I, sec. 1, citing Babbitz v. McCann, 310 F Supp. 293.

Where U.S. supreme court decisions clearly made Wisconsin antiabortion statute unenforceable, issue in physician's action for injunctive relief against enforcement became mooted, and it no longer presented case or controversy over which court could have jurisdiction. Larkin v. McCann, 368 F Supp. 1352.

State regulation of abortion. 1970 WLR 933.

940.05 Manslaughter. Whoever causes the death of another human being under any of the following circumstances is guilty of a Class C felony:

(1) Without intent to kill and while in the heat of passion; or

(2) Unnecessarily, in the exercise of his privilege of self-defense or defense of others or the privilege to prevent or terminate the commission of a felony; or

(3) Because such person is coerced by threats made by someone other than his coconspirator and which cause him reasonably to believe that his act is the only means of preventing imminent death to himself or another; or

(4) Because the pressure of natural physical forces causes such person reasonably to believe that his act is the only means of preventing imminent public disaster or imminent death to himself or another.

History: 1977 c. 173.

Uniform instruction No. 1140 as to self-defense approved. Mitchell v. State, 47 W (2d) 695, 177 NW (2d) 833.

Failure to negate the intentional nature of the killing or establish adequate provocation requires the refusal of a manslaughter instruction. State v. Lucynski, 48 W (2d) 232, 179 NW (2d) 889.

Where there was no evidence which would constitute either first or second degree murder a finding that defendant acted in the heat of passion will not sustain a conviction of manslaughter. Boissonneault v. State, 50 W (2d) 662, 184 NW (2d) 846.

A defendant is not entitled to submission of a manslaughter (self-defense) verdict when he testified that he did not intend to do the act which resulted in death. Day v. State, 55 W (2d) 756, 201 NW (2d) 42.

An instruction as to self-defense and one in regard to manslaughter are not mutually exclusive. Self-defense may be either a complete defense or a mitigation of murder. Ross v. State, 61 W (2d) 160, 211 NW (2d) 827.

Driveway incident took place 5 days prior to the shooting. Such anger would not constitute adequate provocation under (1). Marks v. State, 63 W (2d) 769, 218 NW (2d) 328.

Court declines to abandon the established objective test applied in manslaughter-heat of passion cases. Hayzes v. State, 64 W (2d) 189, 218 NW (2d) 717.

Instruction under (2) is proper only if, under some reasonable view, the evidence is sufficient to establish guilt of causing the death of another in the exercise of self-defense. Bedford v. State, 65 W (2d) 357, 222 NW (2d) 658.

Where defendant testified to being beaten continually by 2 officers after dropping gun and repeatedly asking officers to stop, trial court erred in refusing to instruct jury on possible "imperfect self-defense" of defendant in grabbing police revolver used in the beating and shooting both officers. State v. Mendoza, 80 W (2d) 122, 258 NW (2d) 260.

State of mind which distinguishes manslaughter from second-degree murder must necessarily be heat of passion required by (1), not depravity of mind evinced by conduct constituting second-degree murder. State v. Klimas, 94 W (2d) 288, 288 NW (2d) 157 (Ct. App. 1979).

Heat of passion has both objective (provocation) and subjective (state of mind) facets. State v. Williford, 103 W (2d) 98, 307 NW (2d) 277 (1981).

Conviction was supported by evidence that accused fired 3 shots at waist level through closed bedroom door. State v. Kelley, 107 W (2d) 540, 319 NW (2d) 869 (1982).

If defendant introduces sufficient evidence to raise heat of passion issue, state has burden to disprove it beyond reasonable doubt. State v. Lee, 108 W (2d) 1, 321 NW (2d) 108 (1982).

Language in (1) requiring that defendant act "without intent to kill" is a legal fiction. Heat of passion negates intent required for 1st degree murder, but defendant acting in heat of passion may still intend to kill. See note to 939.32, citing State v. Oliver, 108 W (2d) 25, 321 NW (2d) 119 (1982).

See note to Art. I, sec. 7, citing State v. Felton, 110 W (2d) 485, 329 NW (2d) 161 (1983).

Defendant's subjective anger was not relevant under (1) due to lack of objectively adequate provocation. McKinney v. Israel, 740 F (2d) 491 (1984).

940.06 Homicide by reckless conduct. (1) Whoever causes the death of another human being by reckless conduct is guilty of a Class C felony.

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

History: 1977 c. 173.

When death results from illegal race on public highway, each driver directly commits homicide by reckless conduct, regardless of which automobile causes death. State v. McClose, 95 W (2d) 49, 289 NW (2d) 340 (Ct. App. 1980).

Conviction under this section does not require proof of intent to kill. See note to 853.11, citing in Matter of Estate of Safran, 102 W (2d) 79, 306 NW (2d) 27 (1981).

Modernizing Wisconsin's homicide statutes. Dickey and Fullin. WBB Jan. 1984.

940.07 Homicide resulting from negligent control of vicious animal. Whoever knowing the vicious propensities of any animal intentionally allows it to go at large or keeps it without ordinary care, if such animal, while so at large or not confined, kills any human being who has taken all the precautions which the circumstances may permit to avoid such animal, is guilty of a Class C felony.

History: 1977 c. 173.

940.08 Homicide by negligent use of vehicle or weapon. **(1)** Whoever causes the death of another human being by a high degree of negligence in the operation or handling of a vehicle, firearm, airgun, knife or bow and arrow is guilty of a Class D felony.

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

History: 1977 c. 173; 1985 a. 293.

High degree of negligence is determined by objective "reasonable person" test; subjective intent is not an element of the offense. Victim's contributory negligence is no defense. Hart v. State, 75 W (2d) 371, 249 NW (2d) 810.

Motorist was properly convicted under this section for running red light at 50 m.p.h., even though speed limit was 55 m.p.h. State v. Cooper, 117 W (2d) 30, 344 NW (2d) 194 (Ct. App. 1983).

940.09 Homicide by intoxicated user of vehicle or firearm. **(1)** Any person who does either of the following under par. (a) or (b) is guilty of a Class D felony:

(a) Causes the death of another by the operation or handling of a vehicle, firearm or airgun and while under the influence of an intoxicant;

(b) Causes the death of another by the operation or handling of a vehicle, firearm or airgun while the person has a blood alcohol concentration of 0.1% or more by weight of alcohol in that person's blood or 0.1 grams or more of alcohol in 210 liters of that person's breath.

(c) A person may be charged with and a prosecutor may proceed upon an information based upon a violation of par. (a) or (b) or both for acts arising out of the same incident or occurrence. If the person is charged with violating both pars. (a) and (b) in the information, the crimes shall be joined under s. 971.12. If the person is found guilty of both pars. (a) and (b) for acts arising out of the same incident or occurrence, there shall be a single conviction for purposes of sentencing and for purposes of counting convictions under s. 30.80 (6) (a) 2 and 3 and counting convictions under ss. 343.30 (1q) and 343.305. Paragraphs (a) and (b) each require proof of a fact for conviction which the other does not require.

(2) The actor has a defense if it appears by a preponderance of the evidence that the death would have occurred even if the actor had not been under the influence of an intoxicant or did not have a blood alcohol concentration described under sub. (1) (b).

(3) An officer who makes an arrest for a violation of this section shall make a report as required under s. 30.686 or 346.635.

History: 1977 c. 173; 1981 c. 20, 184, 314, 391; 1983 a. 459; 1985 a. 331.

NOTE: For legislative intent see chapter 20, laws of 1981, section 2051 (13).

See note to art. I, sec. 11, citing State v. Jenkins, 80 W (2d) 426, 259 NW (2d) 109.

See note to art. I, sec. 11, citing State v. Bentley, 92 W (2d) 860, 286 NW (2d) 153 (Ct. App. 1979).

See note to art. I, sec. 8, citing State v. Rabe, 96 W (2d) 48, 291 NW (2d) 809 (1980).

Because driving while intoxicated is inherently dangerous, state need not prove causal connection between driver's intoxication and victim's death. Sub. (2) does not violate right against self-incrimination. State v. Caibaiosai, 122 W (2d) 587, 363 NW (2d) 574 (1985).

940.12 Assisting suicide. Whoever with intent that another take his or her own life assists such person to commit suicide is guilty of a Class D felony.

History: 1977 c. 173.

940.13 Abortion exception. No fine or imprisonment may be imposed or enforced against and no prosecution may be brought against a woman who obtains an abortion or otherwise violates any provision of any abortion statute with respect to her unborn child or fetus, and s. 939.05, 939.30 or 939.31 does not apply to a woman who obtains an abortion or otherwise violates any provision of any abortion statute with respect to her unborn child or fetus.

History: 1985 a. 56.

940.15 Abortion. **(1)** In this section, "viability" means that stage of fetal development when, in the medical judgment of the attending physician based on the particular facts of the case before him or her, there is a reasonable likelihood of sustained survival of the fetus outside the womb, with or without artificial support.

(2) Whoever intentionally performs an abortion after the fetus or unborn child reaches viability, as determined by reasonable medical judgment of the woman's attending physician, is guilty of a Class E felony.

(3) Subsection (2) does not apply if the abortion is necessary to preserve the life or health of the woman, as determined by reasonable medical judgment of the woman's attending physician.

(4) Any abortion performed under sub. (3) after viability of the fetus or unborn child, as determined by reasonable medical judgment of the woman's attending physician, shall be performed in a hospital on an inpatient basis.

(5) Whoever intentionally performs an abortion and who is not a physician is guilty of a Class E felony.

(6) Any physician who intentionally performs an abortion under sub. (3) shall use that method of abortion which, of those he or she knows to be available, is in his or her medical judgment most likely to preserve the life and health of the fetus or unborn child. Nothing in this subsection requires a physician performing an abortion to employ a method of abortion which, in his or her medical judgment based on the particular facts of the case before him or her, would increase the risk to the woman. Any physician violating this subsection is guilty of a Class E felony.

(7) Subsections (2) to (6) and s. 939.05, 939.30 or 939.31 do not apply to a woman who obtains an abortion that is in violation of this section or otherwise violates this section with respect to her unborn child or fetus.

History: 1985 a. 56.

BODILY SECURITY

940.19 Battery; aggravated battery. **(1)** Whoever causes bodily harm to another by an act done with intent to cause bodily harm to that person or another without the consent of the person so harmed is guilty of a Class A misdemeanor.

(1m) Whoever causes great bodily harm to another by an act done with intent to cause bodily harm to that person or another without the consent of the person so harmed is guilty of a Class E felony.

(2) Whoever causes great bodily harm to another by an act done with intent to cause great bodily harm to that person or another with or without the consent of the person so harmed is guilty of a Class C felony.

(3) Whoever intentionally causes bodily harm to another by conduct which creates a high probability of great bodily harm is guilty of a Class E felony. A rebuttable presumption

of conduct creating a high probability of great bodily harm arises:

(a) If the person harmed is 62 years of age or older; or

(b) If the person harmed has a physical disability, whether congenital or acquired by accident, injury or disease, which is discernible by an ordinary person viewing the physically disabled person.

History: 1977 c. 173; 1979 c. 111, 113.

See note to 939.22, citing La Barge v. State, 74 W (2d) 327, 246 NW (2d) 794.

Under facts of aggravated battery case, trial court erred in finding "great bodily harm" as a matter of law. Flores v. State, 76 W (2d) 50, 250 NW (2d) 720.

See note to Art. I, sec. 5, citing State v. Giwosky, 109 W (2d) 446, 326 NW (2d) 232 (1982).

As matter of law, under "elements only" test, both simple battery under (1) and intermediate battery under (1m) require proof of element (nonconsent) not required in aggravated battery under (2) and, hence, are not lesser included offenses. State v. Richards, 123 W (2d) 1, 365 NW (2d) 7 (1985).

940.20 Battery: special circumstances. (1) BATTERY BY PRISONERS. Any prisoner confined to a state prison or other state, county or municipal detention facility who intentionally causes bodily harm to an officer, employe, visitor or another inmate of such prison or institution, without his or her consent, is guilty of a Class D felony.

(2) BATTERY TO LAW ENFORCEMENT OFFICERS AND FIRE FIGHTERS. Whoever intentionally causes bodily harm to a law enforcement officer or fire fighter, as those terms are defined in s. 102.475 (8) (b) and (c), acting in an official capacity and the person knows or has reason to know that the victim is a law enforcement officer or fire fighter, by an act done without the consent of the person so injured, is guilty of a Class D felony.

(3) BATTERY TO WITNESSES AND JURORS. Whoever intentionally causes bodily harm to a person who he or she knows or has reason to know is or was a witness as defined in s. 940.41 (3) or a grand or petit juror, and by reason of the person having attended or testified as a witness or by reason of any verdict or indictment assented to by the person, without the consent of the person injured, is guilty of a Class D felony.

(4) BATTERY TO PUBLIC OFFICERS. Whoever intentionally causes bodily harm to a public officer in order to influence the action of such officer or as a result of any action taken within an official capacity, without the consent of the person injured, is guilty of a Class E felony.

History: 1977 c. 173; 1979 c. 30, 113, 221; 1981 c. 118 s. 9; 1983 a. 189 s. 329 (4).

Resisting or obstructing an officer (946.41) is not a lesser-included crime of battery to a peace officer. State v. Zdiarstek, 53 W (2d) 776, 193 NW (2d) 833.

Battery to prospective witness is prohibited by 940.206, 1975 stats. [now 940.20 (3)]. McLeod v. State, 85 W (2d) 787, 271 NW (2d) 157 (Ct. App. 1978).

County deputy sheriff was not acting in official capacity under 940.205, 1975 stats. [now 940.20 (2)] when making arrest outside county of employment. State v. Barrett, 96 W (2d) 174, 291 NW (2d) 498 (1980).

See note to 48.34, citing In Interest of C.D.M. 125 W (2d) 170, 370 NW (2d) 287 (Ct. App. 1985).

940.201 Abuse of children. Whoever tortures a child or subjects a child to cruel maltreatment, including, but not limited, to severe bruising, lacerations, fractured bones, burns, internal injuries or any injury constituting great bodily harm under s. 939.22 (14), is guilty of a Class E felony. In this section, "child" means a person under 16 years of age.

History: 1977 c. 173, 355.

Section is not unconstitutionally vague or overly broad. State v. Killory, 73 W (2d) 400, 243 NW (2d) 475.

Physical injury is not an element of crime of cruel maltreatment. State v. Campbell, 102 W (2d) 243, 306 NW (2d) 272 (Ct. App. 1981).

Court could not exempt 10 year old victim from obligation to testify because of possible emotional harm. State v. Gilbert, 109 W (2d) 501, 326 NW (2d) 744 (1982).

See note to Art. I, sec. 11, citing State v. Boggess, 115 W (2d) 443, 340 NW (2d) 516 (1983).

Specific intent to cruelly maltreat is not an element of child abuse. Battery is not a lesser included offense of child abuse. State v. Danforth, 129 W (2d) 187, 385 NW (2d) 125 (1986).

Parent who knowingly permits another to abuse child violates this section. State v. Williquette, 129 W (2d) 239, 385 NW (2d) 145 (1986).

940.203 Sexual exploitation of children. (1) No person may knowingly employ, use, persuade, induce, entice or coerce any child to engage in sexually explicit conduct for the purpose of photographing, filming, videotaping, recording the sounds of or displaying in any way the conduct.

(2) No person may photograph, film, videotape, record the sounds of or display in any way a child engaged in sexually explicit conduct.

(3) No parent, legal guardian or other person exercising temporary or permanent control of a child may knowingly permit, allow or encourage the child to engage in sexually explicit conduct which is filmed, photographed, videotaped, recorded for sound or displayed in any way.

(4) No person may knowingly produce, perform in, profit from, promote, import, reproduce, advertise, sell, distribute, or possess with intent to sell or distribute, any undeveloped film, photographic negative, photograph, motion picture, videotape, sound recording or other reproduction of a child engaging in sexually explicit conduct.

(5) Whoever violates this section is guilty of a Class C felony.

(6) In this section:

(a) "Child" means any person under the age of 18 years.

(b) "Sexually explicit conduct" means actual or simulated:

1. Sexual intercourse, including genital-genital, oral-genital, anal-genital or oral-anal, whether between persons of the same or opposite sex;

2. Bestiality;

3. Masturbation;

4. Sexual sadism or sexual masochistic abuse, including but not limited to, flagellation, torture or bondage; or

5. Lewd exhibition of the genitals or pubic area of any person.

History: 1977 c. 356; 1985 a. 29.

940.205 Battery or threat to department of revenue employe. (1) In this section, "family member" means a parent, spouse, sibling, child, stepchild or foster child.

(2) Whoever intentionally causes bodily harm or threatens to cause bodily harm to the person or family member of any department of revenue official, employe or agent 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 victim 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 harmed or threatened.

History: 1985 a. 29.

940.21 Mayhem. Whoever, with intent to disable or disfigure another, cuts or mutilates the tongue, eye, ear, nose, lip, limb or other bodily member of another, is guilty of a Class B felony.

History: 1977 c. 173.

Injury by conduct regardless of life (940.23) and endangering safety by conduct regardless of life (941.30) can be lesser included offenses of mayhem. Kirby v. State, 86 W (2d) 292, 272 NW (2d) 113 (Ct. App. 1978).

940.22 Sexual exploitation by therapist. (1) In this section:

(a) "Physician" has the meaning designated in s. 448.01 (5).

(b) "Psychologist" means a person who practices psychology, as described in s. 455.01 (5).

(c) "Psychotherapy" has the meaning designated in s. 455.01 (6).

(d) "Sexual contact" has the meaning designated in s. 940.225 (5) (a).

(e) "Therapist" means a physician, psychologist, social worker, nurse, chemical dependency counselor, member of the clergy or other person, whether or not licensed by the state, who performs or purports to perform psychotherapy.

(2) Any person who is or who holds himself or herself out to be a therapist and who intentionally has sexual contact with a patient or client during any ongoing therapist-patient or therapist-client relationship, regardless of whether it occurs during any treatment, consultation, interview or examination, is guilty of a Class D felony. Consent is not an issue in an action under this subsection.

History: 1983 a. 434; 1985 a. 275.

940.225 Sexual assault. (1) FIRST DEGREE SEXUAL ASSAULT. Whoever does any of the following is guilty of a Class B felony:

(a) Has sexual contact or sexual intercourse with another person without consent of that person and causes pregnancy or great bodily harm to that person.

(b) Has sexual contact or sexual intercourse with another person without consent of that person 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 it to be a dangerous weapon.

(c) Is aided or abetted by one or more other persons and has sexual contact or sexual intercourse with another person without consent of that person by use or threat of force or violence.

(d) Has sexual contact or sexual intercourse with a person 12 years of age or younger.

(2) SECOND DEGREE SEXUAL ASSAULT. Whoever does any of the following is guilty of a Class C felony:

(a) Has sexual contact or sexual intercourse with another person without consent of that person by use or threat of force or violence.

(b) Has sexual contact or sexual intercourse with another person without consent of that person and causes injury, illness, disease or impairment of a sexual or reproductive organ, or mental anguish requiring psychiatric care for the victim.

(c) Has sexual contact or sexual intercourse with a person who suffers from a mental illness or deficiency which renders that person temporarily or permanently incapable of appraising the person's conduct, and the defendant knows of such condition.

(d) Has sexual contact or sexual intercourse with a person who the defendant knows is unconscious.

(e) Has sexual contact or sexual intercourse with a person who is over the age of 12 years and under the age of 16 years.

(3) THIRD DEGREE SEXUAL ASSAULT. Whoever has sexual intercourse with a person without the consent of that person is guilty of a Class D felony.

(3m) FOURTH DEGREE SEXUAL ASSAULT. Whoever has sexual contact with a person without the consent of that person is guilty of a Class A misdemeanor.

(4) CONSENT. "Consent", as used in this section, means words or overt actions by a person who is competent to give informed consent indicating a freely given agreement to have sexual intercourse or sexual contact. Consent is not an issue in alleged violations of subs. (1) (d) and (2) (c), (d) and (e). The following persons are presumed incapable of consent but the presumption may be rebutted by competent evidence, subject to the provisions of s. 972.11 (2):

(b) A person suffering from a mental illness or defect which impairs capacity to appraise personal conduct.

(c) A person who is unconscious or for any other reason is physically unable to communicate unwillingness to an act.

(5) DEFINITIONS. In this section:

(a) "Sexual contact" means any intentional touching by the complainant or defendant, either directly or through clothing by the use of any body part or object, of the complainant's or defendant's intimate parts if that intentional touching is either for the purpose of sexually degrading; or for the purpose of sexually humiliating the complainant or sexually arousing or gratifying the defendant or if the touching contains the elements of actual or attempted battery under s. 940.19 (1).

(b) "Sexual intercourse" includes the meaning assigned under s. 939.22 (36) as well as cunnilingus, fellatio or anal intercourse between persons or any other intrusion, however slight, of any part of a person's body or of any object into the genital or anal opening either by the defendant or upon the defendant's instruction. The emission of semen is not required.

(6) MARRIAGE NOT A BAR TO PROSECUTION. A defendant shall not be presumed to be incapable of violating this section because of marriage to the complainant.

(7) DEATH OF VICTIM. This section applies whether a victim is dead or alive at the time of the sexual contact or sexual intercourse.

History: 1975 c. 184, 421; 1977 c. 173; 1979 c. 24, 25, 175, 221; 1981 c. 89, 308, 309, 310, 311; 1985 a. 134.

Legislative Council Note, 1981: Presently, [in sub (5) (a)] the definition of "sexual intercourse" in the sexual assault statute includes any intrusion of any part of a person's body or of any object into the genital or anal opening of another person. This proposal clarifies that the intrusion of the body part or object may be caused by the direct act of the offender (defendant) or may occur as a result of an act by the victim which is done in compliance with instructions of the offender (defendant). [Bill 630-S]

Failure to resist is not consent under (4). State v. Clark, 87 W (2d) 804, 275 NW (2d) 715 (1979).

Injury by conduct regardless of life is not a lesser-included crime of first-degree sexual assault. Hagenkord v. State, 94 W (2d) 250, 287 NW (2d) 834 (Ct. App. 1979).

Multiplicitous sexual assault charges discussed. State v. Eisch, 96 W (2d) 25, 291 NW (2d) 800 (1980).

Trial court did not err in denying accused's motions to compel psychiatric examination of victim and to discover victim's past addresses. State v. Lederer, 99 W (2d) 430, 299 NW (2d) 457 (Ct. App. 1980).

See note to Art. I, sec. 5, citing State v. Baldwin, 101 W (2d) 441, 304 NW (2d) 742 (1981).

Age classifications under this section may be open to question. State v. Cuyler, 110 W (2d) 133, 327 NW (2d) 662 (1983).

See note to Art. I, sec. 5, citing State v. Lomagro, 113 W (2d) 582, 335 NW (2d) 583 (1983).

Jury instruction that touching "vaginal area" constituted sexual contact was correct. State v. Morse, 126 W (2d) 1, 374 NW (2d) 388 (Ct. App. 1985).

Conviction on 2 counts of rape, where offenses occurred 25 minutes apart in same location, did not violate double jeopardy provisions of U.S. Constitution. Harrell v. Israel, 478 F Supp. 752 (1979).

Conviction for attempted first degree sexual assault based on circumstantial evidence did not deny due process. Upshaw v. Powell, 478 F Supp. 1264 (1979).

940.23 Injury by conduct regardless of life. Whoever causes great bodily harm to another human being by conduct imminently dangerous to another and evincing a depraved mind, regardless of human life, is guilty of a Class C felony.

History: 1977 c. 173.

The crime of injury by conduct regardless of life can be a lesser included offense under an information charging first degree murder. Martin v. State, 57 W (2d) 499, 204 NW (2d) 499.

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

See note to 904.04, citing Hammen v. State, 87 W (2d) 791, 275 NW (2d) 709 (1979).

See note to 940.225, citing Hagenkord v. State, 94 W (2d) 250, 287 NW (2d) 834 (Ct. App. 1979).

Policy exclusion based on intentional or expected acts was not, as a matter of law, triggered by conviction under this section. Poston v. U.S. Fidelity & Guarantee Co. 107 W (2d) 215, 320 NW (2d) 9 (Ct. App. 1982).

940.24 Injury by negligent use of weapon. (1) Whoever causes bodily harm to another by a high degree of negligence in the operation or handling of a firearm, airgun, knife or bow and arrow, is guilty of a Class E felony.

(2) A high degree of negligence is conduct which demonstrates ordinary negligence to a high degree, consisting of an

act which the person should realize creates a situation of unreasonable risk and high probability of death or great bodily harm to another.

History: 1977 c. 173.

940.245 Injury by negligent use of a vehicle. (1) Whoever causes great bodily harm to another by a high degree of negligence in the operation or handling of a vehicle is guilty of a Class E felony.

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

History: 1985 a. 293.

940.25 Injury by intoxicated use of a vehicle. (1) Any person who does either of the following under par. (a) or (b) is guilty of a Class E felony:

(a) Causes great bodily harm to another human being by the operation of a vehicle while under the influence of an intoxicant.

(b) Causes great bodily harm to another human being by the operation of a vehicle while the person has a blood alcohol concentration of 0.1% or more by weight of alcohol in that person's blood or 0.1 grams or more of alcohol in 210 liters of that person's breath.

(c) A person may be charged with and a prosecutor may proceed upon an information based upon a violation of par. (a) or (b) or both for acts arising out of the same incident or occurrence. If the person is charged with violating both pars. (a) and (b) in the information, the crimes shall be joined under s. 971.12. If the person is found guilty of both pars. (a) and (b) for acts arising out of the same incident or occurrence, there shall be a single conviction for purposes of sentencing and for purposes of counting convictions under s. 30.80 (6) (a) 2 or 3 and counting convictions under ss. 343.30 (1q) and 343.305. Paragraphs (a) and (b) each require proof of a fact for conviction which the other does not require.

(2) The actor has a defense if it appears by a preponderance of the evidence that the great bodily harm would have occurred even if the actor had not been under the influence of an intoxicant or did not have a blood alcohol concentration described under sub. (1) (b).

(3) An officer who makes an arrest for a violation of this section shall make a report as required under s. 30.686 or 346.635.

History: 1977 c. 193, 272; 1981 c. 20, 184; 1983 a. 459; 1985 a. 331.

NOTE: For legislative intent see chapter 20, laws of 1981, section 2051 (13).

Double jeopardy clause was not violated by charge under (1) (c) of violations of (1) (a) and (b). State v. Bohacheff, 114 W (2d) 402, 338 NW (2d) 466 (1983).

940.26 Hazing. (1) In this section "forced activity" means any activity which is a condition of initiation or admission into or affiliation with an organization, regardless of a student's willingness to participate in the activity.

(2) No person may intentionally or recklessly engage in acts which endanger the physical health or safety of a student for the purpose of initiation or admission into or affiliation with any organization operating in connection with a school, college or university. Under those circumstances, prohibited acts may include any brutality of a physical nature, such as whipping, beating, branding, forced consumption of any food, liquor, drug or other substance, forced confinement or any other forced activity which endangers the physical health or safety of the student.

(3) Whoever violates sub. (2) is guilty of:

(a) A Class A misdemeanor if the act results in or is likely to result in bodily harm to another.

(b) A Class E felony if the act results in great bodily harm or death to another.

History: 1983 a. 356.

940.27 Failure to support. (1) In this section:

(a) "Child support" means an amount which a person is legally obligated to provide under s. 49.90, 767.25 or 767.51.

(b) 1. "Grandchild support" means an amount which a person is legally obligated to provide under s. 49.90 (1) (a) 2 and (11).

2. Subdivision 1 does not apply after December 31, 1989.

(c) "Spousal support" means an amount which a person is legally obligated to provide under s. 49.90 or 767.26.

(2) Before January 1, 1990, any person who intentionally fails for 120 or more consecutive days to provide spousal, grandchild or child support which the person knows or reasonably should know the person is legally obligated to provide is guilty of a Class E felony.

(2m) After December 31, 1989, any person who intentionally fails for 120 or more consecutive days to provide spousal or child support which the person knows or reasonably should know the person is legally obligated to provide is guilty of a Class E felony.

(3) Before January 1, 1990, any person who intentionally fails for less than 120 consecutive days to provide spousal, grandchild or child support which the person knows or reasonably should know the person is legally obligated to provide is guilty of a Class A misdemeanor.

(3m) After December 31, 1989, any person who intentionally fails for less than 120 consecutive days to provide spousal or child support which the person knows or reasonably should know the person is legally obligated to provide is guilty of a Class A misdemeanor.

(4) Before January 1, 1990, under this section, the following is prima facie evidence of intentional failure to provide child, grandchild or spousal support:

(a) Before January 1, 1990, for a person subject to a court order requiring child, grandchild or spousal support payments, failure to pay any child, grandchild or spousal support payment required under the order.

(b) Before January 1, 1990, for a person not subject to a court order requiring child, grandchild or spousal support payments, failure to provide support equal to at least the amount set forth under s. 49.19 (11) (a) 1 or causing a spouse, grandchild or child to become a dependent person as defined in s. 49.01 (2).

(4m) After December 31, 1989, under this section, the following is prima facie evidence of intentional failure to provide child or spousal support:

(a) After December 31, 1989, for a person subject to a court order requiring child or spousal support payments, failure to pay any child or spousal support payment required under the order.

(b) After December 31, 1989, for a person not subject to a court order requiring child or spousal support payments, failure to provide support equal to at least the amount set forth under s. 49.19 (11) (a) 1 or causing a spouse or child to become a dependent person as defined in s. 49.01 (2).

(5) Before January 1, 1990, under this section, it is not a defense that child, grandchild or spousal support is provided wholly or partially by any other person.

(5m) After December 31, 1989, under this section, it is not a defense that child or spousal support is provided wholly or partially by any other person.

(6) Before January 1, 1990, under this section, affirmative defenses include but are not limited to inability to provide child, grandchild or spousal support. A person may not demonstrate inability to provide child, grandchild or spousal support if the person is employable but, without reasonable excuse, either fails to diligently seek employment, terminates employment or reduces his or her earnings or assets.

(6m) After December 31, 1989, under this section, affirmative defenses include but are not limited to inability to provide child or spousal support. A person may not demonstrate inability to provide child or spousal support if the person is employable but, without reasonable excuse, either fails to diligently seek employment, terminates employment or reduces his or her earnings or assets.

(7) (a) Before January 1, 1990, before trial, upon petition by the complainant and notice to the defendant, the court may enter a temporary order requiring payment of child, grandchild or spousal support.

(b) In addition to or instead of imposing a penalty authorized for a Class E felony or a Class A misdemeanor, whichever is appropriate, the court shall:

1. Before January 1, 1990, if a court order requiring the defendant to pay child, grandchild or spousal support exists, order the defendant to pay the amount required including any amount necessary to meet a past legal obligation for support and, if appropriate, modify that order.

2. Before January 1, 1990, if no court order described under subd. 1 exists, enter such an order and do so, for orders for child or spousal support, after considering s. 767.25.

(c) Before January 1, 1990, an order under par. (a) or (b), other than an order for grandchild support, constitutes an income assignment under s. 767.265 and may be enforced under s. 767.30. Any payment ordered under par. (a) or (b), other than a payment for grandchild support, shall be made in the manner provided under s. 767.29.

(7m) (a) After December 31, 1989, before trial, upon petition by the complainant and notice to the defendant, the court may enter a temporary order requiring payment of child or spousal support.

(b) In addition to or instead of imposing a penalty authorized for a Class E felony or a Class A misdemeanor, whichever is appropriate, the court shall:

1. After December 31, 1989, if a court order requiring the defendant to pay child or spousal support exists, order the defendant to pay the amount required including any amount necessary to meet a past legal obligation for support and, if appropriate, modify that order.

2. After December 31, 1989, if no court order described under subd. 1 exists, enter such an order after considering s. 767.25.

(c) After December 31, 1989, an order under par. (a) or (b) constitutes an income assignment under s. 767.265 and may be enforced under s. 767.30. Any payment ordered under par. (a) or (b) shall be made in the manner provided under s. 767.29.

(8) The provisions of any court order requiring payment of grandchild support payments, issued under this section prior to January 1, 1990, do not apply after December 31, 1989.

History: 1985 a. 29, 56.

940.28 Abandonment of young child. Whoever, with intent to abandon the child, leaves any child under the age of 6 years in a place where the child may suffer because of neglect is guilty of a Class D felony.

History: 1977 c. 173.

940.285 Abuse of vulnerable adults. (1) In this section:

(a) "Developmentally disabled person" has the meaning specified in s. 55.01 (2).

(b) "Infirmities of aging" has the meaning specified in s. 55.01 (3).

(c) "Mental illness" has the meaning specified in s. 55.01 (4m).

(d) "Other like incapacities" has the meaning specified in s. 55.01 (5).

(e) "Vulnerable adult" means any person 18 years of age or older who either is a developmentally disabled person or has infirmities of aging, mental illness or other like incapacities and who is:

1. Substantially mentally incapable of providing for his or her needs for food, shelter, clothing or personal or health care; or

2. Unable to report cruel maltreatment without assistance.

(2) Any person, other than a person in charge of or employed in any facility enumerated in s. 940.29, who intentionally subjects a vulnerable adult to cruel maltreatment is guilty of a Class A misdemeanor. Cruel maltreatment includes, but is not limited to, any of the following conduct:

(a) Conduct which causes or could reasonably be expected to cause bodily harm.

(b) Restraint, isolation or confinement which causes or could reasonably be expected to cause bodily harm or mental or emotional damage, including harm to the vulnerable adult's psychological or intellectual functioning which is exhibited by severe anxiety, depression, withdrawal, regression or outward aggressive behavior or a combination of these behaviors. This paragraph does not apply to restraint, isolation or confinement by order of a court or other lawful authority.

(c) Cruel deprivation of a basic need for food, shelter, clothing or personal or health care, including cruel deprivation resulting from the failure to provide or arrange for a basic need by a person who has assumed responsibility for meeting the need voluntarily or by contract, agreement or court order.

History: 1985 a. 306.

940.29 Abuse of residents of facilities. Any person in charge of or employed in any of the following facilities who abuses, neglects or ill-treats any person confined in or a resident of any such facility or who knowingly permits another person to do so is guilty of a Class E felony:

(1) A penal or correctional institution or other place of confinement; or

(2) A home for the aged; or

(3) A hospital for the mentally ill; or

(4) A school or institution for the mentally deficient; or

(5) A state school for the blind or deaf; or

(6) An institution operated by a licensed child welfare agency or by a public agency for the care of neglected, dependent, or delinquent children; or

(7) A nursing home as defined in s. 50.01 (3).

(8) A community-based residential facility as defined in s. 50.01 (1).

History: 1975 c. 119; 1975 c. 413 s. 18; 1977 c. 173; 1979 c. 124; 1981 c. 20.

Evidence that residents suffered weight loss and bedsores was sufficient to support nursing home administrator's conviction of abuse of residents. State v. Serebin, 119 W (2d) 837, 350 NW (2d) 65 (1984).

940.291 Law enforcement officer; failure to render aid. (1) Any peace officer, while acting in the course of employment or under the authority of employment, who intentionally fails to render or make arrangements for any necessary first aid for any person in his or her actual custody is guilty of a Class A misdemeanor if bodily harm results from the failure. This subsection applies whether the custody is lawful or unlawful

and whether the custody is actual or constructive. A violation for intentionally failing to render first aid under this subsection applies only to first aid which the officer has the knowledge and ability to render.

(2) Any peace officer who knowingly permits another person to violate sub. (1), while acting in the course of employment or under the authority of employment, is guilty of a Class A misdemeanor.

History: 1983 a. 27.

940.30 False imprisonment. Whoever intentionally confines or restrains another without the person's consent and with knowledge that he or she has no lawful authority to do so is guilty of a Class E felony.

History: 1977 c. 173.

False imprisonment is not a lesser included offense of the crime of kidnapping. Geitner v. State, 59 W (2d) 128, 207 NW (2d) 837.

940.305 Taking hostages. Whoever by force or threat of imminent force seizes, confines or restrains a person without the person's consent and with the intent to use the person as a hostage in order to influence a person to perform or not to perform some action demanded by the actor is guilty of a Class A felony; but if each person who is held as a hostage is released without bodily harm prior to the time of the defendant's arrest, the defendant is guilty of a Class B felony.

History: 1979 c. 118.

940.31 Kidnapping. (1) Whoever does any of the following is guilty of a Class B felony:

(a) By force or threat of imminent force carries another from one place to another without his consent and with intent to cause him to be secretly confined or imprisoned or to be carried out of this state or to be held to service against his will; or

(b) By force or threat of imminent force seizes or confines another without his consent and with intent to cause him to be secretly confined or imprisoned or to be carried out of this state or to be held to service against his will; or

(c) By deceit induces another to go from one place to another with intent to cause him to be secretly confined or imprisoned or to be carried out of this state or to be held to service against his will.

(2) Whoever violates sub. (1) with intent to cause another to transfer property in order to obtain the release of the victim is guilty of a Class A felony; but if the victim is released without permanent physical injury prior to the time the first witness is sworn at the trial the defendant is guilty of a Class B felony.

History: 1977 c. 173.

Conviction under (1) (c) does not require proof of express or implied misrepresentations. State v. Dalton, 98 W (2d) 725, 298 NW (2d) 398 (Ct. App. 1980).

940.32 Abduction. Whoever, for any unlawful or immoral purpose, does any of the following is guilty of a Class C felony:

(1) By force or threat of imminent force, takes any child under 18 years of age from his home or the custody of his parent or guardian; or

(2) Entices any child under 18 years of age from his home or the custody of his parent or guardian; or

(3) By force or threat of imminent force, detains any child under 18 years of age who is away from his home or the custody of his parent or guardian.

History: 1977 c. 173.

Cross Reference: See also 946.715 regarding interference by parent with parental rights of other parent.

Elements of abduction under (2) discussed. State v. Deer, 125 W (2d) 357, 372 NW (2d) 176 (Ct. App. 1985).

940.34 Duty to aid victim or report crime. (1) (a) Whoever violates sub. (2) (a) is guilty of a Class C misdemeanor.

(b) Whoever violates sub. (2) (b) is guilty of a Class C misdemeanor and is subject to discipline under s. 440.26 (6).

(c) Whoever violates sub. (2) (c) is guilty of a Class C misdemeanor.

(2) (a) Any person who knows that a crime is being committed and that a victim is exposed to bodily harm shall summon law enforcement officers or other assistance or shall provide assistance to the victim.

(b) Any person licensed as a private detective or granted a private security permit under s. 440.26 who has reasonable grounds to believe that a crime is being committed or has been committed shall notify promptly an appropriate law enforcement agency of the facts which form the basis for this belief.

(c) 1. In this paragraph, "unlicensed private security person" means a private security person, as defined in s. 440.26 (1m), who is exempt from the permit and licensure requirements of s. 440.26.

2. Any unlicensed private security person who has reasonable grounds to believe that a crime is being committed or has been committed shall notify promptly an appropriate law enforcement agency of the facts which form the basis for this belief.

(d) A person need not comply with this subsection if any of the following apply:

1. Compliance would place him or her in danger.

2. Compliance would interfere with duties the person owes to others.

3. In the circumstances described under par. (a), assistance is being summoned or provided by others.

4. In the circumstances described under par. (b) or (c), the crime or alleged crime has been reported to an appropriate law enforcement agency by others.

(2m) If a person is subject to sub. (2) (b) or (c), the person need not comply with sub. (2) (b) or (c) until after he or she has summoned or provided assistance to a victim.

(3) If a person renders emergency care for a victim, s. 895.48 applies. Any person who provides other reasonable assistance under this section is immune from civil liability for his or her acts or omissions in providing the assistance. This immunity does not apply if the person receives or expects to receive compensation for providing the assistance.

History: 1983 a. 198; 1985 a. 152, 332.

940.41 Definitions. In ss. 940.42 to 940.49:

(1) "Malice" or "maliciously" means an intent to vex, annoy or injure in any way another person or to thwart or interfere in any manner with the orderly administration of justice.

(2) "Victim" means any natural person against whom any crime as defined in s. 939.12 or under the laws of the United States is being or has been perpetrated or attempted in this state.

(3) "Witness" means any natural person who has been or is expected to be summoned to testify; who by reason of having relevant information is subject to call or likely to be called as a witness, whether or not any action or proceeding has as yet been commenced; whose declaration under oath is received as evidence for any purpose; who has reported any crime to any peace officer or prosecutor; or who has been served with a subpoena issued under s. 885.01 or under the authority of any court of this state or of the United States.

History: 1981 c. 118.

940.42 Intimidation of witnesses; misdemeanor. Except as provided in s. 940.43, whoever knowingly and maliciously

prevents or dissuades, or who attempts to so prevent or dissuade any witness from attending or giving testimony at any trial, proceeding or inquiry authorized by law, is guilty of a Class A misdemeanor.
History: 1981 c. 118.

940.43 Intimidation of witnesses; felony. Whoever violates s. 940.42 under any of the following circumstances is guilty of a Class D felony:

(1) Where the act is accompanied by force or violence or attempted force or violence, upon the witness, or the spouse, child, parent, sibling or grandchild of the witness or any person sharing a common domicile with the witness.

(2) Where the act is accompanied by injury or damage to the real or personal property of any person covered under sub. (1).

(3) Where the act is accompanied by any express or implied threat of force, violence, injury or damage described in sub. (1) or (2).

(4) Where the act is in furtherance of any conspiracy.

(5) Where the act is committed by any person who has suffered any prior conviction for any violation under ss. 940.42 to 940.45, s. 943.30, 1979 stats., or any federal statute or statute of any other state which, if the act prosecuted was committed in this state, would be a violation under ss. 940.42 to 940.45.

(6) Where the act is committed by any person for monetary gain or for any other consideration acting on the request of any other person. All parties to the transactions are guilty under this section.
History: 1981 c. 118.

940.44 Intimidation of victims; misdemeanor. Except as provided in s. 940.45, whoever knowingly and maliciously prevents or dissuades, or who attempts to so prevent or dissuade, another person who has been the victim of any crime or who is acting on behalf of the victim from doing any of the following is guilty of a Class A misdemeanor:

(1) Making any report of the victimization to any peace officer or state, local or federal law enforcement or prosecuting agency, or to any judge.

(2) Causing a complaint, indictment or information to be sought and prosecuted and assisting in the prosecution thereof.

(3) Arresting or causing or seeking the arrest of any person in connection with the victimization.
History: 1981 c. 118.

940.45 Intimidation of victims; felony. Whoever violates s. 940.44 under any of the following circumstances is guilty of a Class D felony:

(1) Where the act is accompanied by force or violence or attempted force or violence, upon the victim, or the spouse, child, parent, sibling or grandchild of the victim or any person sharing a common domicile with the victim.

(2) Where the act is accompanied by injury or damage to the real or personal property of any person covered under sub. (1).

(3) Where the act is accompanied by any express or implied threat of force, violence, injury or damage described in sub. (1) or (2).

(4) Where the act is in furtherance of any conspiracy.

(5) Where the act is committed by any person who has suffered any prior conviction for any violation under ss. 940.42 to 940.45, s. 943.30, 1979 stats., or any federal statute or statute of any other state which, if the act prosecuted was committed in this state, would be a violation under ss. 940.42 to 940.45.

(6) Where the act is committed by any person for monetary gain or for any other consideration acting on the request of any other person. All parties to the transactions are guilty under this section.
History: 1981 c. 118.

940.46 Attempt prosecuted as completed act. Whoever attempts the commission of any act prohibited under ss. 940.42 to 940.45 is guilty of the offense attempted without regard to the success or failure of the attempt. The fact that no person was injured physically or in fact intimidated is not a defense against any prosecution under ss. 940.42 to 940.45.
History: 1981 c. 118.

940.47 Court orders. Any court with jurisdiction over any criminal matter, upon substantial evidence, which may include hearsay or the declaration of the prosecutor, that knowing and malicious prevention or dissuasion of any person who is a victim or who is a witness has occurred or is reasonably likely to occur, may issue orders including but not limited to any of the following:

(1) An order that a defendant not violate ss. 940.42 to 940.45.

(2) An order that a person before the court other than a defendant, including, but not limited to, a subpoenaed witness or other person entering the courtroom of the court, not violate ss. 940.42 to 940.45.

(3) An order that any person described in sub. (1) or (2) maintain a prescribed geographic distance from any specified witness or victim.

(4) An order that any person described in sub. (1) or (2) have no communication with any specified witness or any victim, except through an attorney under such reasonable restrictions as the court may impose.
History: 1981 c. 118.

940.48 Violation of court orders. Whoever violates an order issued under s. 940.47 may be punished as follows:

(1) If applicable, the person may be prosecuted under ss. 940.42 to 940.45.

(2) As a contempt of court under ch. 785. A finding of contempt is not a bar to prosecution under ss. 940.42 to 940.45, but:

(a) Any person who commits a contempt of court is entitled to credit for any punishment imposed therefor against any sentence imposed on conviction under ss. 940.42 to 940.45; and

(b) Any conviction or acquittal for any substantive offense under ss. 940.42 to 940.45 is a bar to subsequent punishment for contempt arising out of the same act.

(3) By the revocation of any form of pretrial release or forfeiture of bail and the issuance of a bench warrant for the defendant's arrest or remanding the defendant to custody. After hearing and on substantial evidence, the revocation may be made whether the violation of order complained of has been committed by the defendant personally or was caused or encouraged to have been committed by the defendant.
History: 1981 c. 118.

940.49 Pretrial release. Any pretrial release of any defendant whether on bail or under any other form of recognizance shall be deemed to include a condition that the defendant neither do, nor cause to be done, nor permit to be done on his or her behalf, any act proscribed by ss. 940.42 to 940.45 and any wilful violation of the condition is subject to punishment as prescribed in s. 940.48 (3) whether or not the defendant was the subject of an order under s. 940.47.
History: 1981 c. 118.